


Warner

JUN - 9 1973

JUN - 1 23



Seal of the State of Connecticut, featuring a shield with a ship, surrounded by the words "CONNECTICUT" and "1720". Below the seal, the text "Constitution 1835" and "Charter 1636" is visible.

STATE LIBRARY,
- HARTFORD -

| CLASS. | BOOK. | DATE. |
|----------------------|-------|--------|
| 974.62 | L719 | Je. 23 |
| v. 1 | | |
| ACCESSION NO. 125414 | | |
| SOURCE. | | |

Ms B
L71
1808
v. 1

17.687
17.327

JUL 10 1923

Chester Conn.

July 9, 1923.

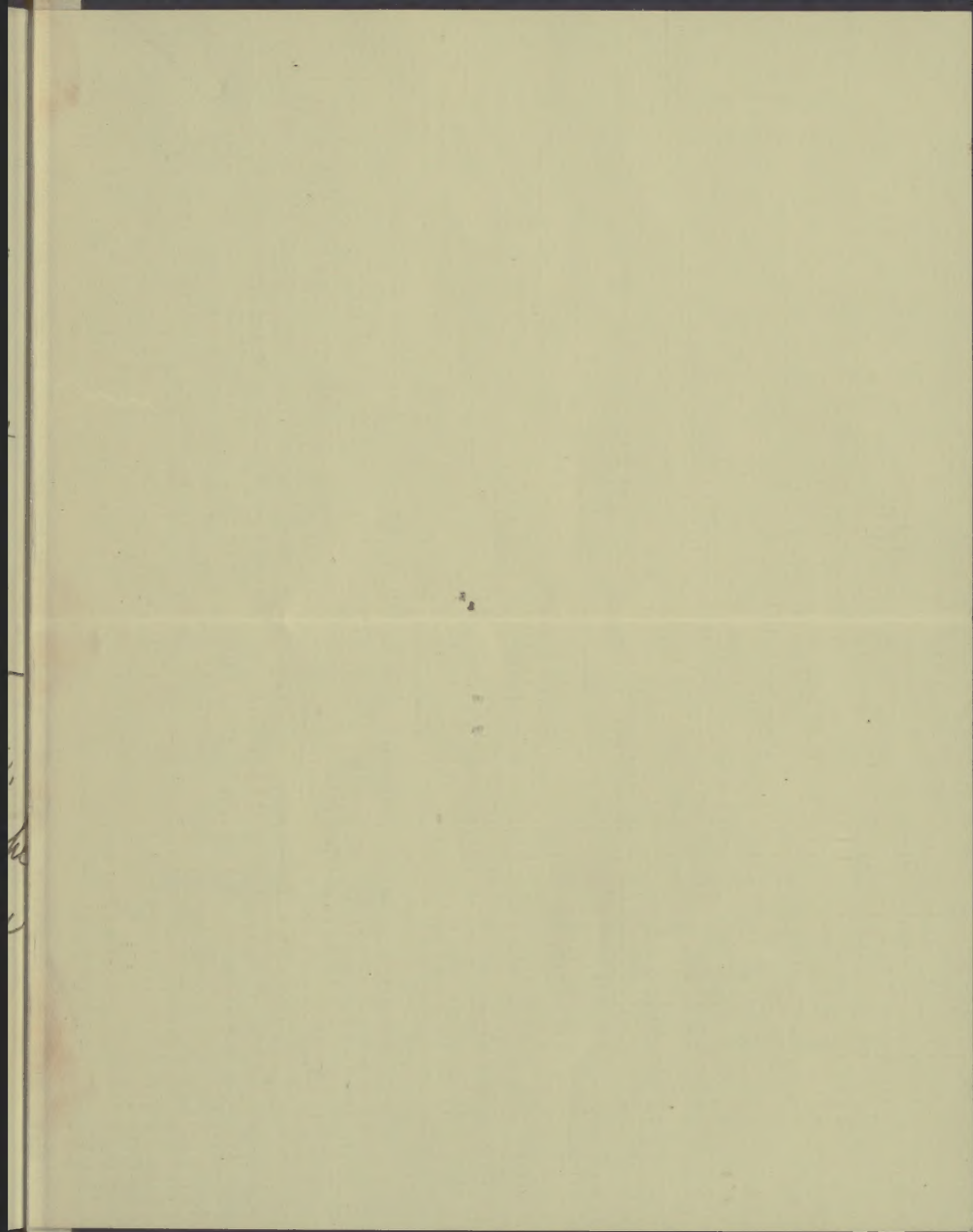
My dear Mr. Godard

Having received no intimation that the box of books sent to you at the Connecticut State Library, in April, was ever received, I am becoming uneasy as to its ultimate fate. Perhaps the box was improperly packed or mailed, for such a weight, and failed to reach its destination. Then too, you may have been uncertain about our present

address, which was, of course,
my own fault because of the
confusion and trouble of having
additions and changes made
in the house - work that has
been long drawn out.

We are now, however, quite
pleasantly settled in our new
home which is still in Chute,
on West Main Street, where I hope
you will call some time if you
are motoring thru the place.

Sincerely yours
Caroline S. Russell



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| There are no reports entered | | | | | | | | | | in or in prior to this period | | | | | | | | | | except memoranda in diocesan | | | | | | | | | | diocesan, East in Maynard | | | | | | | | | | and elsewhere in diocese | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 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| Year book pt 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 4 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 6 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 7 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 8 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 9 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 11 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 12 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 13 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 14 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 15 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 16 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 17 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 18 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 19 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 20 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 21 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 22 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 23 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Year book pt 30 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Year book pt 40 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Year book pt 42 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 43 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 44 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 45 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 46 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 47 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 48 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 49 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 50 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 51 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 52 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 53 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 54 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 55 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 56 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 57 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 58 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 59 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 60 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 61 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 62 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 63 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 64 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 65 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 66 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 67 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 68 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 69 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 70 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 71 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 72 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 73 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 74 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 75 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 76 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 77 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 78 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 79 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 80 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 81 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 82 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 83 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 84 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 85 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 86 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 87 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 88 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 89 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 90 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 91 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 92 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 93 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 94 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 95 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 96 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 97 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 98 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 99 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year book pt 100 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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|----|-----------------|------|
| 5 | Edw. II | 1551 |
| 6 | Hen. Bevesham | 52 |
| 7 | Reg. Chichester | 53 |
| 8 | Mary Bevesham | 54 |
| 9 | Dean Bevesham | 55 |
| 10 | Wm. Bevesham | 56 |
| 11 | Edw. Bevesham | 57 |
| 12 | Edw. Bevesham | 58 |
| 13 | Edw. Bevesham | 59 |
| 14 | Edw. Bevesham | 60 |
| 15 | Edw. Bevesham | 61 |
| 16 | Edw. Bevesham | 62 |
| 17 | Edw. Bevesham | 63 |
| 18 | Edw. Bevesham | 64 |
| 19 | Edw. Bevesham | 65 |
| 20 | Edw. Bevesham | 66 |
| 21 | Edw. Bevesham | 67 |
| 22 | Edw. Bevesham | 68 |
| 23 | Edw. Bevesham | 69 |
| 24 | Edw. Bevesham | 70 |
| 25 | Edw. Bevesham | 71 |
| 26 | Edw. Bevesham | 72 |
| 27 | Edw. Bevesham | 73 |
| 28 | Edw. Bevesham | 74 |
| 29 | Edw. Bevesham | 75 |

| | | |
|----|-----------|------|
| 18 | Elizabeth | 1576 |
| 19 | John Bell | 1577 |
| 20 | John Bell | 1578 |
| 21 | John Bell | 1579 |
| 22 | John Bell | 1580 |
| 23 | John Bell | 1581 |
| 24 | John Bell | 1582 |
| 25 | John Bell | 1583 |
| 26 | John Bell | 1584 |
| 27 | John Bell | 1585 |
| 28 | John Bell | 1586 |
| 29 | John Bell | 1587 |
| 30 | John Bell | 1588 |
| 31 | John Bell | 1589 |
| 32 | John Bell | 1590 |
| 33 | John Bell | 1591 |
| 34 | John Bell | 1592 |
| 35 | John Bell | 1593 |
| 36 | John Bell | 1594 |
| 37 | John Bell | 1595 |
| 38 | John Bell | 1596 |
| 39 | John Bell | 1597 |
| 40 | John Bell | 1598 |
| 41 | John Bell | 1599 |
| 42 | John Bell | 1600 |

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12. 1.

2 Unimpaired - The principle of the rule is
that a law which is retroactive in its
operation is a law. Since retro-
active laws are in themselves very common
it is not fact that an operation is retroactive
in its effect. The fact that a retroactive law
is in common is not the same as the fact that
the difference between them is that the former
are not only in their operation - but also of
the latter kind are either civil or criminal.
Retroactive laws constitute a genus of which
express fact laws are a species. They are those
which punish an act or a crime committed before
that law was enacted is an express fact law -
it is such as is prohibited by the constitution of the
United States & also by the constitution of some of
the respective states. For example, a re-
troactive law is such as imposes the obligation
of a contract already made - as well as punish
penalties for crimes before committed. The dis-
tinction between these two kinds of laws and the
nature of retroactive laws has been well pointed

out in the case of the United States in case reported
in 10 Dallas

It is this rule of civil contract & the rule which
binds the United States & the States - The Supreme Court
in every State is the authoritative power

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Municipal law - The third rule is that the words of the law
are always to be understood with respect to the
substance of the matter of them.

1844 The fourth rule is that the effects & consequences of
these different constructions are to be regarded - & this

652 is what always furnishes the argument & decision

1844 recently when after consulting the preamble con-

61 text & the precise & definite meaning cannot be

528 ascertained from them. And it means similarity & analogy with the

But fifth & lastly the most important rule & one

which perhaps will include all the others is that

the reason & spirit of the law are always to be con-

sulted in putting a true construction upon it.

This says the Gentleman is the cardinal rule of con-

struction. The other rules are merely ancillary to

them. From this rule results what is called the

equity of law. Equity of law is defined by Justice

to be the correction of that wherein the law by reason

of its universality is deficient. - But says the G.

Please you would be apt to understand the meaning of

652 the term equity as here used better without further

than definition than with it. - So it would seem to ap-

61 ply to that construction which a court of law necessarily

shall rather than a court of law would give it. But it is

21 an established rule that courts of law & courts of equity

1844 put the same construction on statutes - The reason

481 an equitable construction of the law is consistent accord & spirit

It is a construction which contradicts Municipal Law⁵
the true intent of the Law maker. An instance
of this kind of construction is cited by Blackstone
as having arisen under the laws of the Romans
when a certain law provided that in case a ves-
sel should be shipwrecked & part of the crew be
captured, those remaining on board should be entitled
to ~~the~~ all the goods on board ^{if the vessel were not} - a question arose
whether a man who was sick in his berth & un-
able to escape should if in such case the goods were
saved be entitled to them - & it was held that he
was not entitled to them because all that the Law
intended was to create an incentive to stay on
board at such times.

Municipal Law is of two kinds in the Unwritten
or the Lex non scripta & the Written or Lex scripta
The Unwritten law includes the common law
properly so called & the Statute law & the
particular laws observed only in certain par-
ticular jurisdictions. - The unwritten law is a
customary law but according to the above dis-
position it is not strictly proper to say that the
unwritten law is the common law. The common law
does not include the whole of the unwritten law
but it is a branch or species of the unwritten law
Unwritten law is so called because its original
institution is not set down in writing - There is no

1. The written law - original written instrument which
 2. can only be called the law - but it is far from
 3. entire after some hundred years or so
 4. The first form of the written law is called
 5. The common law. - This is a customary law - a
 6. general system - no contradictory provisions
 7. particular system - and it is called common
 8. law because it is customary & because in England
 9. it extends over the whole realm. The common law
 10. like all the other branches of the written law
 11. depends for its authority & support on immemorial
 12. usage - but the time of a universal re-
 13. ception of it from time immemorial. ~~But~~ like
 14. a good custom then - it must extend back to
 15. the time of legal memory i.e. to the time of the
 16. accession of Rich. I. to the throne - in the 12th century
 17. this is altogether theory - no evidence & speculation
 18. It is not true that the com. law in its present state
 19. of perfection existed at the time of Rich. I. - yet
 20. in theory the law was then & always has been
 21. what it is now. But what exactly was known in
 22. the twelfth century of the municipal law?
 23. Nothing - not even the name at that time was
 24. even heard of - it is merely ideal to suppose them
 25. aware of such thing the present system of mu-
 26. nicipal law at that period. But as the original
 27. institution of the com. law was not abolition of writing

the question may occur where is the Municipal Law
the common law to be found? The only ^{answer} to this inquiry
is that the evidence of the common law is to be
found in the records of courts - reports of cases
judicially decided - treatises of skilled & learned
men in the law - the opinions of judges &c.
then are not the laws if they were they would
come under the denomination of written law
Judicial decisions & extrajudicial opinions are not
themselves laws but only the evidence of what
the law is. Thus the first principle of Littleton
the most authoritative & correct of any other
& one which has been universally approved of yet
it is not the law but the evidence of it only. But
it is otherwise as to the acts of parliament these
are not the evidence of the law but the law it
self & must be taken into account they are written. 7
These can never be departed from - nor overruled
& the same would be the case of the common law if
it were written - Courts would be as much bound
by them as by the laws of Parliament.
A precedent is a former judicial decision on the
point in question. Nothing short of a judicial
decision can properly be called a precedent
The most authoritative opinion (as that of Little-
ton like a Blackstone) are not precedents.
The opinion of judges is not of course a precedent if

§. 11. *Unwritten law* - But the precise point which determines
the merits of a case, judicially decided is a we-
sential. The judges often lay down rules and
principles - correct & instructive but they are
not to be regarded as precedents.
As to the authority of precedents there has been
much controversy. - But says the Lord Chief
Justice it would be the better opinion that precedents
are always to be followed unless they are
manifestly unjust. Precedents therefore are never to
be overruled - because their reasons cannot be
discovered. - They are *prima facie* law - & he
who would avoid them must take the bur-
den of proof upon himself - he must prove
that they are totally absurd or unjust.
But this customary law was actually created
& confirmed by courts of justice - And is a part of
the law in Westminster Hall. And there is a custom-
ary law - & yet there must inevitably be a
failure of justice. It is so high a physical im-
possibility says he that justice could be done
in the most simple case imaginable - that I
do not deem it too much to say that it is abso-
lutely impossible - without a system of writs
law or customary law. The stat. consists of pos-
itive rules & as such are binding whether reasonable
or not - but on the other hand the common law is

connected system of principles found in Municipal Law
derived upon logical deduction. But if the Law had
been created by courts of justice - how is it reason-
able with the definition of Municipal Law for
courts of justice are not the "supreme power" -
The courts of justice are not the supreme power
yet whatever law they create if the Legislature
or supreme power do not abrogate it expressly
it is ^{considered} as being made by the supreme
power. - The supreme power acquiesces in that
which it does not expressly regulate & so they
do (as cannot necessarily ^{be} implied) - and it is the
law so created. - Therefore these courts of law
are dependent upon & subject to the regulations
of the supreme power and so may be considered
as agents of the supreme power & quasi-legislation
fac. per se.

Modern decisions that no rules of law are made by the
law itself - but it is evident that what the law has
been from time immemorial. But there have been
entire branches of the law since established since
the time of Richard I. - Statute of Jurisdiction
were unknown at that time & Lord Coke speaks
of them as little known in his time. - Also were
bills of exchange known in short the whole
mercantile law was built up since the middle
by a single man, Lord Mansfield and he has been

Unwritten law - emphatically called the *law of the land* -
 one of the important branches of jurisprudence.
 Let Holt it is true understood the subject of the
 written law very well in his time - but were
 he alive now the knowledge that is then had
 of it or rather his ignorance would render him
 a more novice in the branch of law.

The law of executory devises was equally unknown
 in the time of Richard I - nor was it known until
 the reign of Queen Elizabeth.

And the same may be said of the *law of the land* -
 or as it is called the *law of the land* -
 for he made almost the whole of it. But all
 this apparently new law theorists would scarce
 tell from time immemorial - but there has been
 no evidence of it till lately.

II Particular Customs - differ from the *law of the land*
 in that the former is a particular local usage
 as the term denote - but the latter is a general
 usage or custom. The former are called particular

74 because they are customs that do not extend
 over the whole realm, ^{in any place} and therefore they

little or not being supposed to be known by the judges

165 as a general rule must be pleaded & proved as a

166 particular fact - i.e. the existence of the custom

167 must be shown in the pleading & in evidence &

168 & then he who would avail himself of such custom

must show that his case comes within the Municipal Law
in that custom. Where one declares on or pleads
a particular ^{custom} it is competent to the other par-
ty to traverse it & put it to the jury for trial. But
if a custom has been once tried & found to exist &
recorded in the same court in which the action
is brought - it cannot again be tried - the court
are bound to take notice of it. Therefore the cus-
tom of London & English where the goods were sold
successor to the inheritance - & the custom of
Galloway in Scotland where the goods are success-
or to the inheritance & so on - are more likely to
be known in evidence they being sufficiently
notorious. The Custom of the Merchant is
not say the Guild that is a more difficult
the observable one is no local usage. It is a
branch of the Law & governs particular trans-
actions there on the whole & again that it
is not a particular custom is evident from its
never being traversed to be specially pleaded &
all particular customs are - & can be tried
by a jury & proved by witnesses. It is said
however that where in some particular cases
the law is doubtful witnesses & shewing that
the custom may be introduced to show what the cus-
tom is - & that is wholly contrary to the authority of the Statute.

Unwritten law - But especially if the customs are
 15. introduced in the case of a single act, it
 16. is probable from what has usually been - & is
 17. introduced & is in the judge's notice
 18. judge. I take it to be the same as a custom
 19. The dictionary I find on the meaning of a
 20. custom - or any other treatises I learned more
 21. than witnesses in the same manner & advice and
 22. inform the judge just one would bring in a
 23. book or an authority - the same in fact can
 24. be made since for the purpose of discovering
 25. what is the law from the
 26. as to the practice necessary to make a legal
 27. custom - Blackstone has laid down a number
 28. of rules which it will be sufficient to observe
 29. without comment. First it must be an immemorial
 30. custom - & it must have been continued
 31. without interruption. It must have been hereditary
 32. It must be reasonable or rather not unreasonable
 33. - for it is inconsistent with him who would
 34. the custom & show it is a custom it is not a custom
 35. & it must be certain in intelligible and definite
 36. It must be a custom - & it is not a custom
 37. where one man is a custom & it is not a custom
 38. The latter custom must be consistent with each
 39. other - two customs inconsistent or contrary to each
 40. other cannot be - it is a legal decision

13
institutions are always, & the constitution & Municipal Laws
strictly where they are in derogation of the law.
And by the custom of law, which is not made by
any species of legislative authority, but by the
use of a long time, & the usual and constant
use of a nation, that he who makes a law for
he cannot, nor even for a hour. In England
all institutions are subject to the royal prerogative
for it is the prerogative of the crown to alter
the laws of the land. - Thus, in a public
institution.

14
The three branches of the law consist
of Particular Laws adopted generally, and only in par-
ticular Courts - Thus the Law of the Land being a
part of the Law of England, these laws are
binding to adoption, and not by accident, or
any original intrinsic authority. In the same
manner the common law of England & the an-
cient Statutes are binding on this country. They
derive their authority from a similar sanction
or adoption - I do not see how he could be said
if these Statutes were never copied into our
Statutes - for there are a host of Statutes
binding on us - but I mean most of these laws
is applicable to this country, & have been so, and by
one another, making a part of the common law of the

17 Unwritten law. The com. law is binding here on-
ly so far as it has been adopted or rather so
far as it is applicable. As it is impossible that ju-
stice can be done without a com. law so every court
ought to regard & admit the Eng. com. law except
so far as it is clearly absurd or unjust & inap-
plicable to the circumstances of this country.
In other words the com. law ^{of Eng.} ~~is the law of the land~~
~~is~~ is *prima facie* the com. law of this
country - & the Eng. com. law would be almost
impossible to apply to one circumstance
it is to be shown by him who would deny the Eng.
as the reason why the com. law of Eng. has
any binding force in this country is because
it was brought over with our ancestors & was
received by them when colonists - & has been re-
ceived ever since as the com. law of our
country as well as of Eng. - The concerns of
the people were & always have been conducted
with reference to that law. - It is clear that at
the establishment of our first residence the
com. law of Eng. had no binding force here
at all. - & there remains the com. law
only by adoption without the force of a statute
in this respect - & therefore our courts have
undoubtedly a right to receive so much of it
as is not unjust & applicable to our circumstances

a great question has been raised. Municipal law
 and capital in the circuit court of the United
 States soon after the adoption of the constitution
 & the organization of the judiciary whether
 there can be in this country a common law
 distinct & different from that of the Eng. crown.
 Whether a series of adjudications in this state
 could exist & be binding on the United States
 court in contravention of the Com. Law. Sup.
 Justice Wilson of Pennsylvania was on the bench
 at that time - & Chief Justice Rogers was one
 of the counsel. The fact was if the court de-
 cided according to the Com. Law it would have
 been in direct opposition to the practice of this
 state - but on the other hand if he decided the
 case against some practice a Com. Law it would
 militate with the Com. Law of Eng. - & now it
 appears to me somewhat probable that it is in-
 dispensably necessary - as far as the Com. Law of
 Eng. is in applicability & our circumstances that
 we should have some new statutes enacted to fill up
 and supply the vacancy occasioned by the
 want of Eng. law. The principal argument
 that was used in opposition to this idea was that
 we could have no Com. Law supported by any
 moral force - it could not have the sanction
 of the ^{whole body} of the people. The answer is that
 they will support a moral force so necessary to our Com. Law

16 *Unwritten law* - The fact is somewhat that rule
of the law, law - or rather that rule is not in
the *Stat. Westminster 2* - that no custom is good
which does not extend back to *Ricard 1* - is
not applicable to this country & can therefore
have no binding force. Indeed the rule that
the origin of a custom must have been as far
back as the time of the accession of the first
Henry there - was established no more than
60 years after that time & if that were the
length of time whereof the memory was
worthy not to the contrary it may be said
that we have custom & tradition of imme-
morial age.

I have said nothing of the fact that ev-
ery sovereign that wishes to have any real
and system of his business must have an
unwritten law - either as a matter of
fact known or a law made or re-made
as exigencies require. For the *Stat. or written*
law cannot afford a real governing action
for no *Stat. law* is in itself so that can be
will furnish rules by which to give justice
in one single & the most simple case imagin-
able - *Yankee Doodle* there were no written
law - & that men are very rational & know
enough to be the judge who in his right

[illegible]

18. Libertista - we can have no income here because we can have no remunerated wage as yet. This is what socialism will retrogress to - we cannot because we cannot.

Then say with the *lex non scripta* - the unwritten law

The *W. T. T. B. & L. & W.* in the *Lex Scripta* - &c.

1st The second branch of the municipal Law - & by this
2nd is meant Statutes or Statute Law - the act of
3rd the English parliament & of our own Legislature
4th The ancient English Statutes are said to be bind-
5^{ing} in this country as far as the Com Law is &
6th not further - & that is agreeable to the Eng. Com Law
7th in regard to their ancient Statutes - There are
8th the Statutes antecedent to which I have no more
9th binding, than if they were a part of the Com Law
10th but all the ancient Statutes antecedent to the time

With the fol-
lowing the reign of
Queen Elizabeth the

Their country men settled have the force only of
 Com. Law - (ie) so far as they are adopted no tim-
 stee - But all the statutes subsequent to that
 period have no binding force at all & are
 so far ~~from~~ null & void. And the reason is because
 one accident when their emigration brought
 with them as they brought so much of the
 Eng. laws as were deemed applicable to this country
 so much therefore as they brought with them in
 other provisions the laws of the same. And the
 English took them over upon their Statutes.

our colonies as being only, prima facie. Municipal Law
the law of these colonies. Those statutes that were said
enacted since the attainment of these colonies are 511-666
not, ^{now} nor have they ever been considered as of any validity
in this country - But not the Municipal Law, for
no one thinks but that the modern decisions of the 52
decisions of 1840, since we are an obligatory code, 2800.
as those of Lord Coke - & the reason is because 75
all the rules of the common law are considered as being
law of an actual date - & its principles extend 560
horizontally & 1000. Black ton 580-595.

We have adopted many of the principles of law that
are now common in the written law - the law that
was not, ^{written} but the law is now & exists of
common law (except as some say is a statute) but they
were created by the state - not by the state
in every state except where they have been adopted
previously - both while the spirit of the law
but within the limits of the law - the
stat. of Quebec gave rise to this part of our law.
As that which in law is written law, by adoption
become a part of our written law - common law.
But this rule extends only to the ancient English
those that were created before the migration of
our settlers - & there are some said once law.
all statutes are either Public or Private - as are we say 1
General or Special - which means the same thing.

Lex Scripta - Public Statutes are enacted regard-
 ing the whole community. Private or Special Stat-
 utes are enacted regard particular persons & pri-
 vate concerns. But the application of this dis-
 tinction says the Gould is by no means obvious
 yet as will be seen hereafter it is distinction
 quite material - It is said public Statutes re-
 gard the whole community: now in most cases
 public Statutes do immediately concern the
 whole community - as the Statute of Descents - of
 Treason & Forgery - Burglary - Statute of Limitations
 & such as punish offences so they do indeed con-
 cern the whole community. But there are pub-
 lic Statutes which relate only to certain classes
 of the public - but a statute that relates to a whole
 class of people may be private. It seems now
 to be agreed however that if the class of persons to
 which the Stat. relates amounts to a ^{the Stat. public} ~~res publica~~
 but if the class amounts to a species only it is a
 private Stat. - But in all such cases what is a
 genus & what a species. Logicians tell us that
 a genus is a more general class & a species is
 a division or one of a number of things id. make
 up a genus. This fixes no definite class of people
 for a public or a private Statute to relate to - But
 it is said if the class of persons expressly con-
 templated by the Stat. can amount to a division

into a species & this species is higher & Municipal Law²¹
than individuals it is a public stat. - but if the
class of persons especially contemplated by the
stat. can admit of no division higher than that
of individuals it is a special or private statute.
Thus a stat. regarding all mechanics is a pub-
lic stat. - For this class consists of a single
class or species - as Blacksmiths Shoemakers &c
suppose if subdivided would only con- 76²⁷⁶
sist of individuals - that a stat. regarding Police
Commissioners - one regarding Traders would be 76
a private statute. Once more - a statute re-
lating to all persons qualified to serve process, 80
is a public statute because this class consists
of three classes viz - Sheriff's Clerks, Sheriffs, & the
Bailiffs & Constables &c but a stat. relative to 86
Constables is a private statute. - & that that re-
lates to one individual as John Doe - or a cor-
poration is a private stat. for the reason above.
Every stat. in Eng. made by the King is public 94
of course - because a public character. Some 8²²⁸
stat. giving lectures to the King are public & some
as if a stat. required all officers to serve 84
long - or would appoint to the King. Local-101015
statutes concerning the public revenue are public
public. 140-145. Statutes admitting
some incidents & coordinate divisions -

[illegible]

When a corporal punishment is Municipal Law
according to this idea is a penalty. But as it is
now used in law & in com. parlance it means
a method or technique - as contradistinguished from the
substantive punishment. - The wages rule all 450
statutes including a penalty are penal statutes but
yet there are certain statutes which operate 414-5
as penal statutes & yet not regarded as such
in their construction. All statutes giving a 2/2
higher penalty than the rule of natural justice
do require - are penal statutes. There are 125-
giving a civil or tortious damages. . . . 60-
civil statutes not penal are of course penal 214
Local legislation & municipal statutes include
no statutes - 1841 126 - 1841 126 - 1841 126
statutes allowing torts in certain cases or rather
in almost all cases - are always held to
be penal. - on the other hand torts are unknown 414
the act - if the 1st provision was amended for
which a tortious claim - on the other hand
the act now reads the 1st was amended pro- 19-22
also in force. The 1st of Gloucester was the 6th
first which allowed torts & the preceding part 214
of. This is considered a contract and a penal 205
statute - but it is not a tortious claim & is not
it is a mere making of tort - giving to the law - 1841
reading only what he strictly means - in the 1st of 50

28
Lex. 101, 102 - But tho a statute inflict a penalty
on its violation - it does not follow that a viola-
tion of it is a crime. That is a question of
the statute may be penal & the action civil.
Thus one brings an action on his own right
to recover the penalty inflicted by the statute
- as in 5 & 6 Geo. 4 - it is a civil ac-
tion & not a criminal action. If a person is indicted
for a breach of the statute it is a criminal action - the
action is criminal & it is the criminal as well as
the state. But an action brought by an indi-
vidual is an action & it is in point of form &
effect the appropriate action. The effect of
the action is indeed penal but the action is
in form civil. This distinction was not well
settled till the time of Lord Mansfield - But
it will be well to make a distinction much im-
portance - especially in the case of a reward
for when the statute of reward allows a reward
1011. in such a case it does not constitute
125 a penal action - Indictments also ~~are~~ ^{public} in nature
1012. ^{prosecution} are prohibited from testifying under
98. an affirmation - as they may in civil actions
1013. The first case where this distinction was est-
1014. ablished was where an individual brought
1015. an action against another for the penalty in-
1016. flicted by the statute relating to the same.

Lastly, statables are divided into Affirmative & Negative. 25
 affirmative & negative statables — The only
 ground for this distinction arises from their
 different morphology. One kind is connected
 in negative terms & the other in affirmative.
 This ~~seems~~ of the former is an expression without the
 then except for the rule of construction & in-
 deed I view this rule of construction itself as
 an unmeaning one — see page 56

These are the several dimensions of the subject.
For the committee, however, it operates upon the
first side of the subject, inasmuch as it is in which
it was enacted - in which some other time, but
somehow must be gradually, arriving at the
point of a general and complete unity, that in the
act of according to the same ⁱⁿ multiple retro-
active in its operations. It is true - in certain
particular cases even, but it is not so in the case of
the original proposition - further does it
not correspond with the law - to which we all-
be done with the law, and a decision of the law to
the end of it - which will be the law making that it
very action, and a complete proposition - how-
ever it is very, rather at the end of it to a
point where it is in the law, and it is a matter of
consequence that the rule is that the law is made in the
the more serious of which is the law, and the more serious

Lex loci sit - neither of them can have priority -
 19th Nov. 1840. Hence if one is so relevant to the other that
 522 they cannot both stand each statute if it is valid
 in law will repeal the other & neither of them will stand
 28th However it is said to seem that the Stat. last
 passed in law will repeal the other but will
 not itself be repealed by the other.

This rule & the Eng. law has always been ex-
 cited in the Statute. I seem to be agreed by the
 gentlemen of the Court here that no Statute
 can have effect till after the close of the session
 in which the law is passed & sufficient time has
 elapsed for the representatives to return & receive
 executive leave & opportunity given to spread
 information. Therefore it is occurred to his
 being in such particular circumstances and
 have had no opportunity to know of such Statute
 being passed.

as to the construction of Statutes. The principle
 is not to be used in the construction
 of Statutes & to ascertain the law or the will
 of the law maker - these rules of construction
 are intended to assist the mind in ascertaining
 what law or what rule of law was intended &
 to be observed. ~~These rules of construction~~ remain a
 beneficial guide - & so as to avoid Statutes as
 will go to take the law out of the Statute.

three years and he considered himself well qualified to fill the office. The matter was referred to the committee and they reported in favor of his election. He was elected and he served for three years. He was re-elected and he served for six years. He was re-elected and he served for nine years. He was re-elected and he served for twelve years. He was re-elected and he served for fifteen years. He was re-elected and he served for eighteen years. He was re-elected and he served for twenty years. He was re-elected and he served for twenty-three years. He was re-elected and he served for twenty-six years. He was re-elected and he served for twenty-nine years. He was re-elected and he served for thirty-two years. He was re-elected and he served for thirty-five years. He was re-elected and he served for thirty-eight years. He was re-elected and he served for forty-one years. He was re-elected and he served for forty-four years. He was re-elected and he served for forty-seven years. He was re-elected and he served for fifty years. He was re-elected and he served for fifty-three years. He was re-elected and he served for fifty-six years. He was re-elected and he served for fifty-nine years. He was re-elected and he served for sixty-two years. He was re-elected and he served for sixty-five years. He was re-elected and he served for sixty-eight years. He was re-elected and he served for seventy-one years. He was re-elected and he served for seventy-four years. He was re-elected and he served for seventy-seven years. He was re-elected and he served for eighty years. He was re-elected and he served for eighty-three years. He was re-elected and he served for eighty-six years. He was re-elected and he served for eighty-nine years. He was re-elected and he served for ninety-two years. He was re-elected and he served for ninety-five years. He was re-elected and he served for ninety-eight years. He was re-elected and he served for one hundred years.

Loc. cit. - have been laid down as applying them in general. Those rules are not applicable in the construction of Statutes, & are of much more use here because more immediately applied in the construction of Statutes than in the rule of the Law.

But to all these rules are in general to be applied in the construction of remedial Statutes but Penal Statutes are to be construed strictly according to the letter of them. This rule may seem odd & we will explain it in the second place it is a rule which will be explained. It is not true to the effect of the Statute that Penal Statutes are to be construed strictly - They are applied & construed strictly in accordance with the intention of it by construing strictly the phrases which are taken from the Statute - the Statute must be construed. As in the other cases it is a liberal construction will be given the phrases in the Statute - the Statute must be construed liberally - & that too is in accordance with the letter of it. It is a kind of a rule which may seem odd. But as it is too

Phil. the rule is laid down in general terms that Penal Statutes are to be construed strictly. This where a Statute enacts that there shall be some crime or offence & that it shall be punished

of the benefit of the law - The house of Commons
it seems conceived it did not belong to a single
person and that one alone only - however the
the other, insisted that he was a house of law
some of the articles it was said that a man
having been a wife and some within the
the law. Indeed the first of the articles in the
second carried it, with a particular detail in
where a man, provided a certain person to be
standing by - he who told a story was not
with the justice. The modern decisions have
have gone down a more liberal place - I have
are several cases in which it is not where
the court went out of the old rule. The
true meaning of the rule is that a man should
should be confined strictly as against the
rights & liberally for him - it is that no person
can shall be admitted to be within the rule
unless clearly within the letter of it. On the other hand
or hard to the subject is within the letter
of the rule. he is not brought within the rule unless
imminent danger clearly within the reason of 1-70
it. - Thus a law of England made it a capital offence
to let blood in the streets - & a 25-80
was held not to extend to a person who died a
fainting man - ^{different man} - This is one instance
of the difference of the law towards offenders.

Lescripte - Suppose a man makes the above
act or that act a crime - & a married man does
the act - is an ^{unlawful} ^{marriage} - The sentence of the
law will not alter either & the word is plain
and clear - & the same in the case with a married
woman - if the act be done under such circum-
stances that the marital exception would excuse
her. It is a general rule that any universal-
ity of expression in a statute does not include ^{the} ~~the~~
persons whose reason or her incapacity is ex-
cluded from similar statutes - unless they
are specially named or provided for. Suppose

Plowd a state, provided that each one shall remain in the
 400 highway until he is tried under a cer-
 tain penalty - in fact, we are not liable because
 the offence committed in the commission cannot
 be a *prima facie* case that is then made by
 illustration, that a trial cannot be had when
 the repetition of an offence is recommended
 penalty is imposed - the rule in such cases
 that the offence is not subject to the accumu-
 lated punishment unless committed of the first
 before the commission of the second. Thus where
 in this state in certain offences - the offender, in
 the first offence, shall be not liable to be tried in second
 & in the second six years if the first offence be com-
 mitted during the punishment - ^{the punishment is not imposed.} The increased pun-

31
court, said he ought not to subject Municipal Law
to an accumulated amendment until he had
had experience of the effect of the measure. 86
correction provided for the Court of Session. This I have
also experienced & the necessity of the law. 40
not probable the Legislature would not have made
the Stat. contemplated such a construction. 34
This rule has been adopted in one case 2-0-85
I conceive say it is possible that this might be
was taking very great liberties with the law. 103
that in favour of a similar - but now this re-
ing understood & the law is not known but
it is right to continue it.

So as a general rule it is a wise & sound
that should not be an obstacle to the progress
of the law - yet the construction of such Statutes
is not uniform - thus the Stat. 15 Geo. 4th provides
that if a servant kills his master he is guilty of
murder, & is liable to death - yet this Stat. has been so
extended in its construction as to make it petty treason
for one to kill his mistress or master's wife. 86
Instances of this kind of construction however
are rare. - The true rule of construction is
one that ought to guide in all cases is to
ascertain the Stat. that the intention of the Legis-
lature should always be carried into effect. Where
the Stat. is doubtful the construction ought not to be 5

Lex Scripta - certainly I go against the *jurisprudence*.

There seems to be a ^{very} strong opinion in
saying that local statutes should be construed
strictly - according to the letter and more
than remedial or beneficial intent. But in
both cases the intention of the Law maker ought
to be the criterion.

The penal laws of one country cannot be ta-
ken notice of in another country so as to strip
the right of a citizen in the latter. There are
strictly local & so is the offence created thereby
in its consequences. It is otherwise with some

of the civil statutes - there may be taken notice of
by one man in another and learn what the law is
being & so enforce it - wherever the application of the
law is for the purpose of giving relief or
enforcing a civil right - but a penal law of

one state can never be enforced in another
state. Hence the penal laws of every country extend

throughout the jurisdiction limits of that country ^{no more}

They become a rule of conduct for every one
within it whether they belong to it or not.

When a penalty is repeatedly incurred for the
same continuance of an offence - as in the case under

consideration with regard to nuisance one penalty
only can be made for at a time. This is a rule
established in our courts but it seems to be

33
upon the principles of the English & Municipal Law
and analogous to cases mentioned in Venetian.
Thus in a case of the construction of a grant to take
Remedial Jurisdiction are the construction of a grant to take
a liberality. The literal construction of a grant to take
jurisdiction is the rule - in the letter of the
statute may be enlarged ⁽²⁾ so as to include cases
in the reason of it tho' not within the letter
or the letter may be restricted as to exclude
cases within the letter tho' not within the rea-
son & equity of the statute. Thus a Statute of Ed-
ward gave a remedy against executors - without using
the word administrators & the two Statutes were in
terms confined to executors yet the court ex-
tended it to administrators against Admin-
istrators - & the same was the case when the
Stat. Edw. III or IV gave a remedy to executors
without using the word administrators. This
was presumed to be the intention of the Legislature
in Executors & Administrators were subject to
nearly the same law & procedure. So also when
the Stat. of Edw. III ~~was~~ enacted that all
persons holding land in fee simple were to be pro-
cessed - it was held not to extend to tenants in fee
of a house - and was so construed - & it is
all that the Statute meant was to give the remedy
devising to those who were entitled to it.

[illegible]

It is a general rule some of them Municipal Law
As to all statutes & laws & also remedial
that the different parts of a Stat. are not to be
struck down that the whole of the Stat. may stand.
a repeal of implication is not to be favored
where however a saving exception or proviso
is totally repugnant to the body of the Stat. & where
the saving is not so repugnant as to destroy it
or diminish it should not be so all the law
of saving the right of the Stat. is void. 87
It is a general rule that if two Statutes are re-
pugnant in point of time - the latter will
repeal the former - that is, as respects the
the last intention & will of the Legislature 287
must rule in case of the Statute. Stat. 1-15
If the latter part of a Stat. is so repugnant to the
the former part that both parts cannot stand 65
the latter will repeal the former. This it will be
seen is not inconsistent with the former rule 658
where a saving is repugnant to the

When the Common Law & Statute Law are at variance
the Common Law is to prevail - & for this 658-41
there is a reason independent of that obvious
one that written law is of higher authority than
unwritten law - for the Stat. Law is subsequent
to the Com. Law. - The origin of one can be traced
to a will of the Legislature - that of the other is unknown.

117 a Statute - Every Statute is in its nature repealable
 & this principle seems to be inherent in the
 very nature of legislative power that therefore
 a right to repeal is well accounted for. Indeed
 the very act of repealing is an act of legislation
 for it changes the body of the laws. When a
 Stat. contains a clause that it shall never be
 repealed this clause is utterly void - it being
 in derogation of subsequent legislatures. Now
 it is a general rule that all legislative acts in
 118 a derogation of the power of a subsequent legis-
 119 tature are void. There have been several ex-
 120 periments of this kind. Eng. says the Court said
 121 it must readily be seen that they are void in
 their own nature. But the all Statutes are
 in their nature repealable yet the law never
 122 is ever repealed by implication. Now read
 123 by implication grows out of a repugnance or
 124 inconsistency of two Statutes - a repugnance to
 125 effect a repeal must be seen.

It is said that an affirmative Statute does not
 abrogate the Com. Law. In this rule says the Court
 I see no fault at all as a proposition. This I observed
 the other day says the Court when I told you that
 this rule was the only foundation for the distinc-
 tion between affirmative & negative Statutes.
 No one can doubt but that an affirmative Stat.

implying a negative does not - Municipal. Tail
gate the same law. Suppose the law in itself
never requires six days notice to the deft before
the court sits & a stat. enacts that the time for
notice shall be 10 days - surely this abrogates & repeals
the former law - Suppose also a statute is that 841
a lower species of punishment be given offenders than
than before existed - as in case of burglary which 537
was anciently punished with death but a stat. & then
provides that it shall be punished by fine and imprisonment &c - no doubt but the former law is abro-
gated. In short then the words & view then as 111-115
a very arbitrary rule & as having no other effect
than a medical one - affirmative statutes how-
ever that give an accumulative remedy do
not abrogate the former law unless by express
words - thus if a stat. in any case give double & treble
damages - this does not destroy the law law rem. 805-5
only for single damages - If the party does not
avail himself of the stat. he takes only single
damages. It is said that an affirmative sta-
te does not repeal an affirmative stat. - This rule shows
surely the statute to be quite as good as the
as the one just before mentioned - it is alto-
gether nonsensical. The truth certainly is that
an affirmative stat. will repeal another affirmative
statute on. If the stat. are repugnant it makes 89

Lex Scripta - no manner of difference whether they
are affirmative or negative.

These rules are not intended to extend to that
alone where there is an express clause of repeal.

2026 It is laid down as a rule that if a stat. inflicts
less a higher or lower punishment for a given of-

252 fence than the law then in force. the law then
in force remains as it was if it is not there

652 to be repealed. Where a repealing stat. is itself
1860 repealed - the stat. first repealed is revived.

65 If a stat. is repealed by three other statutes and
436 two of these repealing statutes be repealed the

45 repealing statute remaining unrepealed con-
252 tinues the repeal of the first stat. If a stat.

636 which has been repealed be afterwards re-
436 pealed - the repealing stat. becomes of no force.

638 It is said that when a stat. is repealed all
acts done under it which were in force are valid
but it is said that in a Statute book and
the acts by a subsequent stat. all acts done
under it which are now void. This rule

Genkins says he could take it is contrary to the prin-
233 ciple of legislation - as it is a rule of legislation

436 that no one right to declare a former stat. void
638 at will - & indeed the rule itself is a rule of

legislation - & a stat. is repealed by another which makes

Descriptive - & the next case is that where the law
 make the punishment for that crime only fine
 or imprisonment - so we have a violation of
 this part of the law. The next case is that where
 1st. the law can be so punished with fine or imprison-
 167 ment - because it would be an acknowledgment
 18th. of punishment - that a new law altering the
 451 punishment of a crime does not prevent
 18th. judgment from being passed upon an offence
 39 committed before the passing of the Act.
 of case occurred not long since in the Court
 of Sessions - where a clerk of the Court of Chancery
 had stolen letters &c. a new Act made after
 the stealing & before judgment had altered the
 2nd. the punishment & the sentence was dis-
 The same doctrine was advanced as in the
 last. agreed & the Court in the case of *Mal. 15th Dec.*
 108 There covenants or stipulations to do a law-
 2d. thing, &c. but which before performance or in the
 15th. of the law be void - the covenant is void
 17th. 30th. this is not incompatible with the rule that
 18th. no retrospective law is justifiable. It does not
 218 come under that description of the law pro-
 18th. hibited by the Constitution of the United States
 211 which says Congress shall make no law to im-
 8th. pair the obligation of contracts. Instance occurs
 167 in all commercial countries where the law

71
execution of such articles be - & Minnich (Lice
ing prohibited - & more or less such cases as
we had engaged & report not reliable & in
each case especially in the state. & we must
the contract is a void one - if the fact were it
is in time for a similar time only the con-
tract may have certain circumstances be
enforced after the fact had occurred & after
I have not anti not to do as such which it is
afterwards made his state to be in a state
the contract is a void one - then you are
enough & serve a notice to seven years address
as & is about enough to be done - & a statute
comes & compels that description of people to fall
down in the hope among - the ceremony is an
enacted because the performance of the
ceremony is by the act of law. Some of
these cases can be considered retroactive law
or such as properly speaking impact the ob-
ligation of a contract according to the spirit
intent of the law. & retroactive law might
be said to be one that impacts the obligation of a
contract & to be such as in its terms guard
quality or delivery of a contract or agreement. It is
by making any species of property a legal service. In the
in contract already made - & by providing that
no void shall be over, or & finding - as in

Lexicographer - there can be no such thing as the abstract
 Lexicographer - or to be more correct, not
 in the proper case - the Lexicographer is a person
 a conditional influence or consequence of the Law.
 I ought not therefore to come under the same
 notion of a retroactive law. It is a state
 which the operation of a retroactive law is
 considered as founded in a principle of
 justice, ^{not} for the purpose of impairing contracts,
 with those covenants, ^{not} to do a particular act - a state
 making that act binding and not a state
 which that covenant.

If a contract does not obligate in that manner while that that is in force - a subsequent act repealing the former will necessarily make the contract void. Thus suppose one covenant to export articles provided it that a subsequent act allowing the exportation will not bind the parties. - For nothing export the to can renounce that which was void at initial. A few years ago we could all notes of hand obligations &c were required to be written on stamped paper - otherwise they would not be given in evidence. - This is not law now but not a note made at that time not enforceable in a court now as well it was under that law. But where complete performance is

[illegible]

72
Lex. scripte - says the people that it must be so
100 the law can hardly be supposed a legislative power
101 but such a law - as a command - would go to
the contrary.
58 I think also that a state contrary to reason
the law of nature or the law of God is not binding
to any Lord Coke & it seems like a, buried, the
Blackstone (see on the contrary) - but Blackstone
cannot the contrary is in all in another place
There is much to be said some will be that
a state contrary to reason is unreasonable. But
it is difficult to decide in many cases what
is reasonable it will be found otherwise it
since such discretionary power to the judges
what seems reasonable to the Legislature will
the rest of the world may seem otherwise to
the judges. Indeed it would be making them
100 to all intent & purpose the supreme power
101 The idea is often well considered) monstrous
518 Whatever they deem inexpedient is according to
Coke the idea, reasonable - fit, & propriety must
108 guide them. - The fact is whether the Statute
100 is reasonable or unreasonable or otherwise the
520 Judges are implicitly bound by it - they can
100 not contravene it. I don't think they do so
101 to the laws of God - or their shield when it is
would override a law. - The law of God is not

part of the municipal law and I think it is
better it should be difficult in many cases to
determine what is the law of God - it would do
great construction would it but upon it as
there are sectarians - what is one man's law
of God is not another - it is true therefore cannot
repeal a stat. because it is as the law of nature
or of God - but he ought rather to refuse to execute
it (ie) resign his office - see also note (N.C. 58)
Laws opposed to the Constitution of a State are
void - a constitution is a part of the municipal
law - but it is of a higher kind - it is a para-
mount municipal law & one by which the legis-
lature alone are bound - hence it would be im-
proper for them to put a construction upon them
it would be making them their own judges
This is rather the province of any individual & Tr.
than the legislature - but it properly belongs to the
courts of justice - see 2 Federalist 198 & 200
It is said that the statute creates a court & is a
matter of justice to a party - they are bound to do
him justice - as where a stat. in some foreign
country authorizes a law court for the relief
when he prevails &c. Jan 26 1820

A stat. make a new law concerning an old
office - & appoints certain particular persons &c &c
to do it - still the court's ordinary jurisdiction

Lex scripta - are not wanted without cognizance of the
 9 line offence - might be subject to conviction of the State
 118 And so it is if a state provides for all crimes
 124 & a certain class shall be tried by persons therein
 130 designated. The limitation of their role is that
 136 a law ^{are not to be passed} extraordinary jurisdiction by implication
 142 thus suppose a state enacts that all theft, larceny
 148 shall be tried by the justices of the peace - or if
 154 all homicide or treason be tried by commission-
 160 sioners - they do not limit the jurisdiction of
 166 their jurisdiction - but it gives a concurrent
 172 jurisdiction with courts of ordinary jurisdiction
 178 And if a state creates a new offence and establishes
 184 a new court jurisdiction for the trial of it - then
 190 a law is made according to the manner that were
 196 made & apprehend the jurisdiction of the State
 202 extraordinary court is assigned. The authors
 208 there are not all agreed - but they are not but
 214 a law that seems to be the better opinion. By this rule
 220 a court is not a state of its jurisdiction to im-
 226 pose jurisdiction - but only its convenience is assigned
 232 to implication.

It is a special authority to give a certain per-
 son - which affects the probability of action that
 must not be put out to justice - and must
 must appear to be a state of the law - on the face
 of it - there is no reason to suppose that it is

Heads must be laid out - examined Municipal. Dec 41
in order to see - among the provisions of the act, laws
are not strictly followed their proceedings are
not valid.

Where a fact makes a certain number of men
it is certain not to rule of the body & con-
tains a certain number of persons - it seems to be
the better opinion that a majority of the
persons - not a majority of the whole body -
shall rule - since it is not binding upon the
whole body. Thus if the whole body consist of 100
three individuals - nine of which make a
quorum - the voice of five, a majority of the
quorum will not bind the rest. Such a body
it is said to be the more creature of the fact.
I have no other power except what is given
given & then I carry their authority into it
but - & therefore it seems to me that I am only
when there are no fact provisions written but
that a majority of the quorum shall bind the
whole.

as private and not concerned as they or more individuals - like a power of attorney delegated to an individual - is private not a general or legal attorney can only be voided. - But this said that, even a certificate is of a public nature - because a majority the whole series present

Descriptive - will bind the whole. - This is then
 with a private authority - to have it to mean
 that the whole comes in order to make
 220 an act valid. - But this is a public nature
 and it is done by delegation & where in such
 225 case a, except a majority is required there
 230 must inevitably be a failure of justice in
 many cases & great inconvenience in order
 therefore in courts of justice consisting of 3
 judges - the voice of three determines the
 question. But this rule does not apply
 to corporations - in an act corporations are
 able to act as if they were a majority of the
 present at a meeting & usually around them
 bind the whole by their doings - & the reason
 235 is because in such cases the individuals
 240 are not known in law - neither are members
 245 or persons - The body is an ideal entity.
 250 All these rules however apply only to cases
 where there is no express provision to the
 contrary in the constitution & that is there is a very
 material rule regarding the integrity of the
 word valid & voidable - There are other words in the
 constitution - void & voidable - but there is a ma-
 terial distinction between them - & void is
 a statement - or contract is one that is a mere
 nullity & voidable - it is as if it had never been.

[illegible]

16th. Knight - the ^{word} in the Stat. of Mortmain 1286 & 1290 was intended to be voidable only, and not void. you make the Stat. a dead letter. it would be 18th. could never receive anything from him to 7th. whom the land was conveyed, for he is neither 18th. party nor privy to the conveyance.

The rules of construction are the same in Equity as in Law. Sometimes it is said there is a difference but it is clear & beyond dispute that as the intention of the Law maker and Governor in all cases - so Courts of Chancery & Courts of Law cannot make the intention different 18th. in each Court. The sources of ~~the~~ ^{the} relation 18th. & the mode of construing it are different in 12 many respects - Chancery gives more scope 20th. after relation to the Statute in many cases 20th. The same rules obtain also in the two Courts and the construction of the Statute - can be perhaps in two classes of cases - 1st. personal 2nd. real & personal.

1st. & Personal Matters - the Statute of Mortmain is applied there & it is said that a Statute is not to be made void by a construction that would be to bring a person into the Statute. Thus the Statute of Mortmain has been received upon both sides after 6 years & there are many cases in which it is said if you would avoid cases

of the Stat. - can have nothing. Muncie but Luce 31
more & plead than now when we are
without mention of it. There is a Stat. of
of the Stat. of Muncie & perjury - the Stat. of 1811
action upon a Stat. for use to be ~~as~~ the 11-22
delt of another - has nothing to do with it. - but that
there is no Stat. or any Statute in writing - or we
may plead gen. issue & object to a Stat. Statute.
So Statute when a Stat. is a different thing &
& recite a Stat. is still different from either
one may plead a Stat. & not count upon it & he
may count upon it and not recite it - but if
he recites it he must count upon it & read it
or if he counts upon it he must plead a Stat.
(ie) where it is necessary to recite or count.
Counting upon a Stat. consists in the express
reference to it in pleading - as in the Statute
contra bonam fidem - or contra bonam fidem - or in
inducement for an offence the Statute is read
but if one declares a Statute in a Statute the
Statute is read as well as the Statute -
I wish you to understand the difference
distinction between pleading - counting upon
or reciting a Statute - for the two are differ-
ent they are in all the books but the same
founded. Sometimes we are told that a Statute
Stat. must be recited when the Statute is not

Lex scripta - Lawyers would know that constituting
 a statute when necessary it would be sufficient
 to recite a statute in & quote its contents - &
 make verbal rehearse - or copy it.

It is a gen. rule that if Public Statutes Courts
 are bound to take notice ex officio or practi-
 cally - but of a private Stat. the foreigner can
 take notice unless specially pleaded or set
 forth. - here the Court must be informed of
 on what the claim is founded - but for the
 Stat. are the gen. law of the land ^{as such} of such
 the judges are supposed to be conversant.
 A private Stat. is only a monument of a pri-
 vate right - & must be treated much the
 same as a bond or covenant - its existence
 & its contents must in the same manner be
 shown. But in Conn. under our laws pleading,
 the def. may make a plea of the gen. issue
 give in evidence a private Stat. For our Stat.
 provides that every matter of defence may be
 given in evidence under the gen. issue except
 some act of the off. - But in this case if the def.
 relies upon this defence he must set forth the
 Stat. the same as he would a private cov-
 enant. But in Conn. regarding if the action be
 brought on a private Stat. it must be set forth
 specially pleaded & recited - It is said that it

pleaded but the truth is it must - ³³ ~~must~~ be
be set out in full as if it were a deed - & not like
only its existence but its contents - ³⁴ ~~as if~~ it were
it public that when required to be pleaded a whole
counted upon - and not be rectified. because ³⁵ ~~if~~
it is not necessary to insert in the count of its ³⁶ ~~its~~
contents. So it is not necessary to recite a ³⁷ ~~as~~
public stat. yet it is said a misrecital is in ³⁸ ~~in~~
such case is fatal & not cured by verdict. ³⁹ ~~245~~
This rule cannot be true where the misrecital ⁴⁰ ~~is~~
is in an immaterial part - as the ⁴¹ ~~part~~ ⁴² ~~of~~ ⁴³ ~~the~~ ⁴⁴ ~~stat.~~ ⁴⁵ ~~is~~
in the - and it be left out. I apprehend ⁴⁶ ~~that~~
all would that the true rule is as ⁴⁷ ~~is~~ ⁴⁸ ~~is~~ ⁴⁹ ~~is~~ ⁵⁰ ~~is~~
it shown - that a misrecital of a public stat. ⁵¹ ~~is~~
is never fatal unless - first it be in a point ma- ⁵² ~~terial~~
terial - & secondly by the party the ⁵³ ~~misrecital~~
up to the stat. misrecital in a material part ⁵⁴ ~~is~~
that a misrecital of a public stat. is ⁵⁵ ~~is~~
fatal if it can be taken advantage of after verdict. ⁵⁶ ~~is~~
moreover a misrecital - unless the party ⁵⁷ ~~misrecital~~
brings over of the stat. - then he may demur. ⁵⁸ ~~to~~
of misrecital of a private stat. may be taken ⁵⁹ ~~advantage~~
advantage of under the plea of misrecital. - or ⁶⁰ ~~is~~
upon plea of placing upon the record it may be ⁶¹ ~~demurred~~
demurred - or the party may recite it him- ⁶² ~~self~~
self & then demur. - in the same manner as ⁶³ ~~is~~
one would take advantage of a bond misrecited.

It is in the nature of a bill that the committee have
that is consistent with the sense of the people - and that
Whose house the change is made by the bill - and
passed - I do not think the government has a right to
state such facts as are contrary to the bill - but
within the limits of the bill - to rectify the
bill - the rectifying would not rectify the bill
but it lengthens the record of the bill - the bill
rectified - & so there occurs it is always necessary
not to rectify a bill in a different manner where it
is not necessary - as in the case of a bill.

He who desires a resolution in a bill - the
must always rectify it - He may state the bill - and
show that it is generally correct - & that it is
is not necessary to rectify it - it is not necessary.

It is more necessary to rectify a bill - the title or
preamble of a bill - the it is frequently done espe-
cially in the House. I have known several bills
defeated upon the ground that the title of the
bill & preamble are not part of the bill - & the
motion is made - & does not constitute any provision of
the bill - usually a name is made a distinction - where
the other the motion of the legislature in passing
the bill - and because it is one that a bill
may contain it is not one ~~which~~ that a bill
contains - the title of a bill is not a part of the
bill - But since that time it has been the custom

56 Lee-Whit - a D. to be seen like the mackerel in
the river - the little brown one is the only one that
I have mentioned - but all in the upper part of the
river - the water is shallow - with the low water
out - but in the river to be seen - & that is the reason
it is not so common as in the river - & in the river
it is common.

[illegible]

[illegible]

Lex Edicta. That by the Stat. giving a new form
of action (not a new right of recovery) it is ne-
cessary to know what Stat. & what action take
place. That the action of waste was at Common
Law only & recover damages for waste - but a Stat.
provided for the recovery of the land in quita-
rent place wasted & therefore that Stat. must be
counted upon (& not as Bacon says recited &
said the reason is because there was at Com. Law
no form of action in the place & the Stat. & in
that said in that Stat. formerly the Stat. in such
cases must have been recited. But this is incorrect
law. The last rule or rather exception & the second
applies only to Stat. giving a new form of action
& not to those which extend the old remedy &
recognition of a new Stat. & new Stat. & in
that it is not necessary to count upon the Stat. that
the Stat. & Stat. given to the Stat. & in
that of the Stat. de bonis & malis in Stat. & in
that & in the Stat. & in the Stat. & in the Stat.
that the Stat. is that public Stat. must not be
counted upon. But where a Stat. gives a remedy
concurrent with the Com. Law or where there
is a Stat. & in the Stat. & in the Stat. & in the Stat.
that the Stat. gives a new kind of action - the Stat. must be
counted upon. It is a general rule that in action

100

1. Let describe - If an contract is made of any kind
 2. Let describe - it is not at common law
 3. Let describe - but a stat. requires it to be in writing
 4. Let describe - it is not necessary & does not declare that
 5. Let describe - that such contract is in writing. See also
 6. Let describe - with regard to the reason for the law that the
 7. Let describe - that did not in fact & created a new rule
 8. Let describe - of pleading - but only a new rule of evidence
 9. Let describe - the stat. does not alter the rule in the common
 10. Let describe - law. See also the rule of pleading. See
 11. Let describe - also under the title of Statute & Evidence which
 12. Let describe - that certain later law kind of contract & requires
 13. Let describe - them to be in writing - & therefore are declared
 14. Let describe - still upon the promise of another & are the best of
 15. Let describe - a third person - it need not be a third person
 16. Let describe - in writing - he may declare as if it were, & will
 17. Let describe - But if writing was essential to the validity of
 18. Let describe - a contract at com. law it is necessary to prove
 19. Let describe - that it be in writing - as a release &c - otherwise
 20. Let describe - it is of no avail. See also where a stat.
 21. Let describe - requires writing necessary in any contract
 22. Let describe - common at com. law - here also it must be a
 23. Let describe - contract & be in writing. Thus a devise which
 24. Let describe - is not at com. law is necessary - but requires to
 25. Let describe - be in writing - & by 22 Stat. &c
 26. Let describe - attested by three witnesses &c - must be a record to
 27. Let describe - be in writing - signed - & attested according to law.

[illegible]

1-3
Low-ignite that no one shall do any business
S.E. corner of the lot with a house - Work of re-
fecting a new excavated be - to be a provision
12th is a branch of the lot it must be a branch
for alleged that the excavation was done within my
ministry there or my ministry - for the excavation is
an excavation at all - the excavation is blinded
and is permitted - but to the excavation that
there is a distinct substantive cause of
excavation is permitted - that the excavation
is blinded is permitted is made within one
month from the commencement of the excavation
but it must not be alleged that the excavation
blinded of excavation is within one month.

The reason of the rule seems to be that in the former case the cardholder goes to the dis-
count office in the office - & is concerned with
the nature of the - but in the latter case
he is not concerned.

235 When there are two existing remedies one
is more efficacious & the other is that either may
not be harmful. See 45- Prop. 648- which in
a fair case is the proper reaction & no more is
on that remedy & it is the right - he may in the
same case resort to the same law remedy and
in reverse. This rule is the same in civil cases
of 10-30 and 10-30 cases. See 2-5 of 1880 - 20 cases 495

63
The authorities however are not authorized to
agree when the first of the latter is 20, - 50, - 100, - 500
That which is in force of law be made of
illegal is a crime and a punishment made. 64
The punishment is therein provided or limited. 64
That in 20, - 50, - 100, - 500, - 1000, - 5000, - 10000
in - charged the first says it shall be 10, - 50, - 100
punishment - it cannot be by the latter. 65
This rule however requires a qualification. 65
In fact the rule. 65
But in the particular mode of procedure
is prescribed in the prohibitory or enacting. 66
Since - & usually it holds where there is no 64-5
distinct prohibition since it is - as by an act
claiming that where also such an act shall 65
be punished ~~as~~ a great number of cases 65
are to be covered by information - where 65
there is no act in the highway shall be 65
and is covered by information. 66
The act is a particular mode of procedure
pointed out in a particular situation along
the rule. 66

But if the rule is prohibited by the law 66
the punishment by the law is ~~prosecution~~ 66
the same mode of procedure may still be 66
followed a situation - the stat. proceeding - 66
in accumulative or concurrent - the reverse 66

Lex scripta - of the rule is that a law does not
 stand unless it is not to be used by individuals
 200 It shall create a right or an offence & give
 law enforcement - The common law will be used in
 210 - in such a case in case of doubt in the
 220 other. The law shall create a right or an
 230 shall be held to be a law in a case of doubt
 240 the right of another to be. For that no one shall
 250 have the right to be a law in a case of doubt
 260 providing a law in a case of doubt in the
 270 common law is a law in a case of doubt
 280 in a case of doubt in a case of doubt in a
 290 case of doubt in a case of doubt in a case of doubt
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 490 in a case of doubt in a case of doubt in a case of doubt
 500 in a case of doubt in a case of doubt in a case of doubt

it seems a public office or a Ministerial Duty
is said to be a duty of the King before the law
being promulgated. Here in this country the King
is against the people or State & before 1870
the State proceeded. at that time in any respect
person the Legislative proceeded to proceed 1870
in 1870. and private persons do induce from 1870
acted but they do it in the name of the King. 1870
and the King & the parliament stand together
the King upon the ground of 1870. This procedure
is now followed in law the same as in 1870
have been made. The King it is said even in 1870
the case of 1870. There is a distinction between 1870
action on private duties called quantum 1870
it is brought partly at the request of the King and 1870
partly at the suit of an individual - It is called 1870
quantum 1870. the words of the writ which are 1870
quantum pro honore regis in quantum pro honore in his part de
regalis de. There is a distinction between a quantum 1870
action & a quantum 1870. The former is a civil action & brought as a civil 1870
action are the latter is a criminal action & 1870
the process is different the offender is a criminal
as an indictment. These quantum actions are the
quantum in law at 1870. brought & recover the 1870
penalty for the violation thereof. - They are 1870
the quantum of the law it is said by some they 1870

Lex scripta were not wholly immaterial. See
 1007. Indeed it seems there was some action similar
 100-1 of popular action is one given to any person
 who will sue for the penalty incurred by the
 violation of a Statute. The distinction between a
 1010 a popular action & a qui tam action is that
 in the former case the penalty is the whole sum
 1020 given to the prosecutor. But in the latter case
 a part goes to the party prosecuting & the other
 to some public purpose. & the King or Treasurer.
 A qui tam action is not necessarily a popular
 action. & a popular action may not be a qui
 tam action. Sergeant Hawkins however says
 that the whole of the penalty be given to the
 party prosecuting yet it is a qui tam action.
 But says Mr. Gould there can be no use of suing
 the King in the suit when that is the case
 and therefore it seems to be distinct from a qui tam.
 That is not a popular action where the penalty
 is to be recovered by the party injured. It does
 not come within the definition of a popular action.
 I am not yet fully satisfied as to this. That is a
 Statute prohibiting & inflicting no penalty for
 it even when the law would supply
 remedy. It is more to be observed as a general
 rule that where a Statute prohibits an act or com-
 mands an act for the benefit & advantage of the

[487]
 424

individuals the same and the same law
 action in that that in any in any in any in any
 but that is the state - the the that the the
 in person & no remedy especially in the part of the
 government. The suppose a that. probably more so
 - was showing another right by which the
 government is other than that a penalty in
 it violation in a case the the the the the
 by a civil action to make in the state the the
 would. when the rule is still more a case of the
 that it is a established rule that if any indi- 650
 vidual has suffered a civil injury by any ^{act} 1000
~~law~~ ^{act} by that. he may have a rem- 5-6
 edy by action against that. & then whether the
 state was made for the benefit of an individ-
 ual or not, ^{whether it is a public} in a case of nuisance.
 where a that. is that a penalty - or a fine or
 a civil right or interest without appropriation. But
 the penalty to a particular person - it be- 100
 longs to the party injured if he will sue for it &
 not to the public. There is a fine in the
 interest a penalty in a case of neglect & it is
 either so - There are that in fiction, sure the not
 extremely quiet in such case if there is an offence
 immediately superior to the public or that
 given the penalty or a part of it to the individual
 prosecuting - any person may have a quiet in a case

Lex. Cristle - And it make no difference in such
 case whether a part of the penalty go to the king
 & part to the prosecutor - or a sum certain be
 given to the prosecutor & the whole of the pen-
 alty go to the king. Thus in Eng. the exportation
 of wool - or carrying away in sack or cask is
 prohibited by stat. but the exportation of wool
 is not injurious to any individual but it is to
 the public immediately - and the rule is that
 any individual may by a good transaction
 recover the penalty. But where the offence is
 immediately injurious to the public only - no
 individual can prosecute quia tam in facta
 penalty - and the penalty is a part of the pen-
 alty - or a sum certain shall be given by the
 stat. to him who shall prosecute - as there is
 no authority either express or implied for
 an individual to prosecute. But if a stat. pro-
 hibits an act immediately injurious to an indi-
 vidual he may maintain a petition which
 shall be no part of the penalty or damages to be paid to
 the party injured or any body else - & in such case
 says the Judge in such the injured party may
 have damages - the penalty be given to the king.
 Where a royal stat. exports a part of the penalty
 to the party aggrieved by the offence he may sue for
 more - without joining the king. & will say that

for the same reason I can see. E. Hammett Luce⁶⁰
no propriety in giving the King even where
the whole bounty is given to any person pro-
secuting - & not exclusively to the party injured
the same reason applies in latter case -
In conformity thereto actions are now given
actions in law for every tort & it
became of the peace &c. in all of which cases the
bounty goes wholly to the individual ^{Grand} Juror
who is entitled to the whole

It is a general rule that where there is a fine both
given to the King - or public in addition to the
civil remedy of the party injured - the King alone
may be instituted recourse in a civil suit
by the party injured - As in Eng. in all civil
actions for tort &c. as trespass - &c. there is what
distinguishes the judgment of Superior from
that of inferior courts - & the same in the case
where the offence is created by Stat. This how-
ever is not the usual course in Conn. I have not
or known any instance say the people where a
fine has been so inflicted. I do believe if there
been one - I have always understood it to be a
rule of the Superior Court ~~made~~ to inflict a fine
in a civil suit unless at the instance of the pro-
secutor or fifth. - And that of the Superior makes
the right to be on conviction by a fine of \$5 & upwards &c.

1. No. of bona fide contribution or a partial one, given
25-6 Bona fide contribution is a bar to any other person
contributing to the same office and on the other hand
the a bona fide contribution is a bar to any other person
1500-41 contribution is a bar to any other person

[illegible]

10th Lex. Britton injured is in the 9th & the 10th of
 24th the 11th. Here the right vent is in the 11th
 81 moment the injury is done.
 11th Where the right vent is in the 11th & the 12th
 65 should be in the 11th - the king may release the
 12th 2. whole body - or grant a pardon - provided he
 128 do it before the prosecution be commenced - &
 24th this will be a good plea to any prosecution
 25th The king however may then or afterwards ratify
 11th. and thus make it not void & give him.
 82 It can be the king's prerogative to pardon
 a crime committed when the crime was committed. It
 would however be that Parliament can discharge
 charge the right of pardon. But I say
 24th could it be can then must work by
 24th. virtue of these statutes. The penalty
 43rd is in the nature of a grant - but I have not
 shown that Parliament can discharge the
 24th without a grant. It is the nature
 of the nature of a grant agreement & it
 will not be being a grant. The king may
 24th but where the penalty is a grant, it is given
 24th to the injured party it is not in the power of
 24th the king even before the suit or prosecution com-
 menced to discharge that debt given to the party
 injured. This is a grant and a pardon is a
 24th pardon. I recollect before me that the contrary

the prosecutor into the House. The principal point
of releasing his part of the penalty at the same
time as the prosecution. But now by the 11th
that Hunt is convicted of perjury in a previous
prosecution shall be a bar to any subsequent
prosecution for the same offence or shall
any reason be the same to be a bar - I think
a statute would be void that such a previous
conviction would be considered void - as if a man
is acquitted or is now acquitted in a previous
trial or is acquitted at all. He shall go to trial
the 11th of Hunt yet I suppose the courts
could order a writ of habeas corpus - as
then would the attorney in the 11th enter a
demand for the writ of the attorney in the 11th
into a writ of habeas corpus. But a statute would be void
to the 11th after conviction would not before the 11th
that be the King's right. as if now by the 11th
that 18th of the 11th or otherwise shall remain
with the offender at all till after an order made by the
court in the 11th without the leave of 18
the court. 5th. 18th. 11th.

If the 11th in a prosecution die - release 11th
with a writ of habeas corpus the King's right
proceed in the suit or commence a new
prosecution in a new name. 11th. 18th
where a writ of habeas corpus is a writ

Let us take material distinction in the effect
of a particular execution & a public process
in time. The rule is that if several persons are
convinced together in a popular action pro-
secuted by an individual one penalty only
is inflicted on all of them - But in the case
of a public action in the King the penalty is inflicted
on each one separately. - The reason of the
distinction is that in the former case the
penalty is in the nature of debt - the latter as
a punishment - in the former civil - in the
latter criminal - the former a satisfaction,
the latter a penalty &c. - But again the
Gould I consider this a very arbitrary dis-
tinction - founded upon nothing but the form
of the action - The penalty can with no pro-
priety be called a satisfaction - for the ac-
tion itself is material & not void. - one
wound in contract the other crime.

Under the title of Criminal Law it was ob-
served that one act may constitute two di-
stinct offences or injuries - & on the other hand
that one offence may consist of a number of
acts - & it is now to be observed that where an
act constitutes but one offence one penalty
only can be recovered. The prosecutor in such case
can not select one particular act or acts to

I say that in these countries Municipal Liege
the offence is combined of - & case occurred
in Eng. under the Stat. of Liege prohibiting la-
bour on the Sabbath as our Stat. does (excepting
necessity & charity excepted) - Where a shoemaker
was prosecuted in several actions for work
done on a different day in the day but the
Court would not sustain them - however but
one offence to work a whole Sabbath.

In England actions in Eng. the offence is taken
that a person who is employed in given day
that is to say where the penalty is given & the offence
is taken since the prosecutor he recover costs &c.
as in civil actions.

10

The affirm. of Leake is a admirable work. The proceedings
may be amended in 1760 & 1761. And a new bill
may be made after a credit for a bill. 434-36

End of the Municipal Liege

I make the title of Barn & Feme or husband & wife are joined & the wife is considered as the husband acquire to the personal property of the wife in possession & her share in action. & the former kind are goods, wares & merchandise, cattle & stock & the latter kind are real estate, addition - injuries & her person or property - & in short all title which he has a right to reduce to possession.

The right which the husband acquires to the personal property of the wife in possession is an absolute right. The moment the ceremony of marriage is performed - the property is that moment transferred - in title & it is as complete as if he had purchased it with his own Gold & money - that property can never again belong to the wife unless the husband leave it to her by will or by gift with retention of it - otherwise upon the death of the husband they would never be returned to the wife - but rest in his executor as assets like his own personal property - The conveyance of the wife's personal estate to the husband is a conveyance of law & not by the act of the parties. There are some things however which are not conveyed by the transfer of the wife's personal estate. I have not water, tithes in which a creditor may

rights of the husband - he is directly disinterested - he if the
 1768 transfer can in contemplation of law be deemed
 1769 But it is asked is not the husband liable & how
 5 how he died - to this it may be replied that the
 1770 husband's liability lasts no longer than even
 1771 liability - Thus if married 10 - to the wife dies - how
 1772 is the creditor of B to collect his money - At the
 1773 time the ^{intention} husband had a great plenty of money
 & other personal property. But he took it all - He
 1774 ~~left~~ ^{left} money or property after he died she is
 1775 liable - Suppose it was first - his executor is not
 1776 liable to pay her debt contracted before marriage
 1777 & to her money she is liable & not otherwise she
 1778 she had money enough when she contracted. The
 1779 creditors must absolutely lose their debts. If
 1780 he dies first her debt contracted before mar-
 1781 riage survive up her - or rather remain ap-
 1782 plicable after the temporary suspension by bankruptcy
 1783 but she has no property - Property is neces-
 1784 sarily transferred from one to another by operation
 1785 of law & the disadvantage of creditors. But
 1786 here is an exception & the rule.

In fact the husband is never considered the debt-
 1787 or so he would be liable after the death of the wife
 1788 but he is not liable after conversion determined
 1789 what then is the ground of his liability during con-
 1790 version - not because he had property of hers

[illegible]

must be discharged with him - he cannot
 be returned a moment. It has been said that
 the liberty of the wife is a sufficient inducement
 to him to do the debt & that he might be
 joined with the wife - this may be true in the
 ancient law but is not true now but is far from
 being true in many cases. His son like the mother
 is a sufficient inducement - to say his wife
 shall release him will be a source of wife
 as the wife chooses in action - & right to divorce is im-
 pious to her honor or property. When marriage is
 respect his right of discharge & then is discharging
 them they are the same as partners in collection
 till he is a right of recovery - a right to receive them
 & to receive & make them his own - but when he
 will does not discharge them nor make them his own
 but is retaining them & collecting - there are notes
 & on bond &c which he may convey to a judgment in
 it charge a release & discharge - he may collect
 them in the name of himself & wife - or he may collect
 them & they are still his own personal property in
 his own - if he does not collect them they sur-
 vive to the wife - or in the case may be given in ac-
 tion. But what is a retaining & by judgment
 the agent of the husband and collected a debt
 and had no right to convey & to make it his own
 another action - a question as to whether

This was a very simple & to be done & Barron & I
 the Court held it was. I have observed say
 the judge that the matter was a sign the
 vice - choice in action - & such a sign must
 would be valid - the husband's power of assign-
 ment however is limited - To render such an
 assignment valid - it must be for a valuable con-
 sideration. an executed contract it will be con-
 sidered as being the parties within a con- 20th
 consideration - but one exception - as if one sells a
 horse and immediately delivers possession of the
 the assign ment of a bond in this case is not good. It
 is considered that it is not in equity. It is also
 a note a bond & the assigner - it is a good consid-
 eration. If the husband does not at once the
 assignⁱⁿ action & he is & during the time he
 continues in debt & does not pay it off
 the assignⁱⁿ action is not valid - it is not in ex-
 ecution & is not in execution. & it is not in ex-
 ecution & it is not in execution. The case
 is not in execution & it is not in execution - but the case is not
 the case is not - but the note is not the husband
 now does not run - He is not an administrator
 & not a husband - He is not a husband & the case is
 a good one - there is no - & it is not in which
 the matter is not in which the matter is not in which
 in equity where the husband has made an assignment

might be the husband's settlement on the wife &
 260 ten years or more, or a life settlement on
 261 her & three or four years settlement & cash in lieu
 262 of three years - he is considered as a trustee for her
 263 share in action & will take them as the husband
 264 has him & the settlement would either in
 265 value for her & her estate & must be considered as
 266 insurance - when the settlement is a personal
 267 property it is not in the interest of the
 268 wife - otherwise the husband would be the more
 269 able to make a settlement on the wife & her
 270 children the wife has no right to be married
 271 given & made as a trustee - the trustee should
 272 perform the duty in the husband's name
 273 at it - the wife is not to be a trustee of the
 274 husband's property & should be a trustee for him
 275 but can the court will always require it in
 276 the case of the husband's wife making a settlement
 277 on the wife - or will the wife will ab-
 278 stain from making a settlement on the husband &
 279 even have the wife will make a settlement on
 280 a matter of course in the case of the wife
 281 as a trustee & to secure the wife's share in
 282 with the settlement. I however the husband's
 283 share in the interest of making the settlement
 284 in most cases the husband is under no obli-
 285 gation at all to make a settlement - He is not

* the wife, suppose of main. Baron & some of
claiming his wife. But in some cases the husband
will take the wife & child - and when he does so
he receives a land from the wife - but I have seen
in the registers of a husband who has been
subject to the same thing - They are of male with
settlement - but the wife before they can be - see
some of the trustees - the trustees - the trustees - the
provision in the will of the husband - the trustees - the
trust make provision for her. And the trustees
shall make a gift to the wife - ^{trust estate} ~~the trustees~~ ^{the trustees} ~~the trustees~~
for a valuable consideration ~~the trustees~~ ^{the trustees} ~~the trustees~~
provision for the wife - the trustees - the trustees - the
trusts are possible in this case. If the trustees
trustee is willing to pay over to the trustees - the trustees
discrepancy will make inter-act & give each other
him - he is the final judge in such cases & so on
& so it is where the wife is the trustee & so on
It has been observed that if the wife is the trustee &
has chosen in action go & the trustees - the trustees - the
land on which has been over time as a trustee & so
that he is the trustee as an administrator & is a trustee & so
that he is the trustee as an administrator - but I have seen
if that is an administrator & the trustees - the trustees - the
the trustees - the trustees - the trustees - the trustees - the
the trustees - the trustees - the trustees - the trustees - the
the trustees - the trustees - the trustees - the trustees - the
the trustees - the trustees - the trustees - the trustees - the

rights of the poor man. - The king was very much
 appointed Bishop & gave them the power to give
 the chief of the law, and then they were to
 them - & then were supposed to be conscientious
 whole men - they would know better how to distribute
 the goods of the deceased, for the benefit of their
 whole state - then he declared they were accountable to
 God only, but God & their own conscience - & then
 said could distribute as they saw fit without the re-
 straint of precedent or law. The other lords
 gave the Bishop power, & made it their duty to
 appoint an administrator upon the estate, and
 individual who died - The administrator must
 be his next friend in the next friend is to be a plain
 man - the term next friend is a vague term. The next
 inquiry is who is the next friend of the wife.
 This is the law of the land, when an - An an-
 cestor brought them over to this North side.
 This was received & adopted as one law, but not
 this the husband was after the wife - & then he said
 to make a husband - but a subsequent statute
 made it a wife as husband. By the Statute
 which is now in force in this country - the hus-
 band after payment of the debt is accountable
 & no one but the supplier of the property - & then
 abolished it - & it is now in force whether he is
 administrator or not - & an adm. must account in his

[illegible]

[illegible]

[illegible]

Rights of the husband - It is an injury to do so to the
 inheritance during coverture. It is an injury
 to her right & therefore she must join him in the
 bill action for recovery - But if the injury be done
 to the use or to entering & destroying crops
 what action can she bring against him
 norance he alone is to bring the action. At the
 death of the husband the wife is the sole owner of the
 estate. He has a secretor has any interest in it
 But suppose he left an estate growing & a crop
 there do not go to her - They were hers in con-
 templation of law & the they act here & the husband
 they are to the husband personal property & will
 go to his executor. What is a necessary consequence
 he may enter & take them off & not be liable in trespass
 But suppose the wife die during the husband - in
 this case the real estate descends to her heirs if
 nothing were than marriage & not coverture. But
 if there be no issue of the marriage born alive.
 The moment a man is married he acquires an
 interest in her lands for the use or enjoyment
 this lasts during coverture.

But he may have an estate during his life in his
 wife's lands - there is called an estate by curtesy
 And to give it in this right there must have been a
 child born alive & one that could be a heir of the
 estate & one must have been actually in possession of the

rights of the husband - there has been some doubt
 what ought to be done whether the husband can be
 85 bound by the curtesy of a trust which is more
 than land is given but trustee to hold in trust for the
 90 wife. The time was during the lifetime of
 both now when the husband could not be bound by
 95 the curtesy of a use. Since then there have been some
 with away & trust estates taken there since all the
 47 decisions have been in favour of allowing cur-
 vity to the husband of the contingent trusts. The
 100 husband is not to be understood that a right
 105 of curtesy is the result of the curtesy of her
 98 wife real property.

I must now marry a woman that has a
 110 of land her land & in such case he has an
 interest in the land - but he has a right of cur-
 115 in lieu of them - he has the right to the land
 that is the same as a use. If the husband in
 such case dies leaving rent in arrears which
 120 during curtesy it goes to his executor or to
 the wife. But if the rent has accrued before cur-
 125 tory it goes to her - she represents him as
 130 any other estate or action existing in her before
 before marriage. This is according to the principle
 135 of the law - some attention is made of this
 140 but we have no doubt as to what the
 husband gains by getting a wife - he gains

that she can do about it. But I think
 her personal property in relation to it will be
 subject to her creditors - that is cannot make
 a decision upon matters of her own property
 since then - that is the first thing that
 as to her own property but as to her property
 to distribute to the next of kin by the law
 the Court case against her will be that in the
 amount of her property it would be proper
 to the creditors by the law of succession that her
 husband would after her death go to the husband
 that her real estate after his death went to
 the wife - or her heirs - that when certain conditions
 the real estate may be reduced to her &c.
 We are now to see what the wife gains by marriage
 & portion of the whole portion - her property
 right of divorce & the doctrine of jointures -
 The wife may gain property in the course of marriage
 but not till the death of the husband. She is then
 entitled to one third part of all the personal es-
 tate after the debts are paid if the husband dies
 if she the husband dies without issue she is
 entitled to one half of the personal estate remain-
 ing after the debts are paid. But this estate she
 may dispose away from her even every last thing at
 her death does not that of distributions of public
 every State has its own - allows her a portion & the husband

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

One has seen her leave. But some
 times I doubt whether a picture may not be
 a good deal more than a real thing. It may
 be a representation of what kind of pro-
 perty she has in a picture showing con-
 stance - It seems to be the result of the
 kind of love, as shown, which was a real
 from the evidence of the words and in an
 moment of time as the best of the world. But
 a thing she might be a wife - if being a thing
 as she is it is not of her own. It would not
 It may be a question whether the general property
 is given as a picture is not the same as shown
 in life. - When a settlement of a picture is
 the wife is not sufficient to maintain her & the ^{husband}
 there would be sufficient - it is evidence of an in-
 sufficient. Again, if settlement of a picture is
 the wife is not sufficient to maintain her which is con-
 sidered as a picture of her character in action. - & if
 the picture is a picture of the marriage - then
 it is not a settlement to be made in consequence of anti-
 cipating marriage it is a good one if it were ac-
 tually made before marriage - There may have
 been special reasons for not making an actual
 settlement before marriage - and the settlement
 made in consequence of a picture. And a set-
 tlement to be made in consequence of a picture.

right of the wife - there is no difference in the law
 now the law it will be no bar if a woman could take an
 estate in fee in her own right & she has that
 right of election after her death - because during
 her life she is under the coercion of the husband
 & would not be bound by any acceptance of that
 force. It seems anciently that the wife might ac-
 cept a jointure and obtain release of personal prop-
 erty in her dower & in such case the husband had
 no right of control over it. There are states in
 218 the Union where the wife acquires a jointure & some
 219m species of property. An estate for life some times like
 505 the Judge says that there is no difference whether such
 506 jointure would not be good but I am not sure
 507 in that there is no such constitution of the law
 508 If the husband makes a will & gives a life estate
 509 an estate or property in her dower - the husband
 510 by accepting it binds her by doing so - but if it be
 511 not accepted to be in fee & dower - the widow may
 take the dower & the given property - It may be said
 that the wife's separate estate is not a good one.
 There is a practice Judge says there is almost
 all the times more a life estate the husband in real
 estate & he will sometimes make a life estate in real
 estate & in such case the wife is not bound to accept
 here arises a question - what is to be done - and
 it means being it in her dower & dower & dower

[illegible]

[illegible]

Widow after marriage - She has a right in the husband's rights of the wife - inherent in the one before marriage but accruing to the other in the marriage.

The subjects now to be considered are - the rights of the husband to the wife's chose in action accruing to her during coverture - & also his right to damages for injury either to his person or property during Coverture - If personal property be given to the wife during coverture & there be no words in the gift expressing it to be her separate property - or in her separate use it goes absolutely to the husband - as if a legacy be given to her by will - or in any other way. And they have the rule now Judge Nelson: But it is very debatable. If a legacy be given to the wife during coverture it goes to the husband's executor & after his death - as it is of a bond or any other in action they are his & he may sue for them although not with injury to the wife - the joining the wife would not defeat the action. It is contended on the one hand that once property is given to the wife during coverture it is absolutely & entirely hers & her executor & not his or his executor - On the other hand it is contended that it goes to the husband as administrator like any other chose in action that is distributed to the next of kin. Still agree in this, that the husband may sue alone for a chose in action

according after marriage. If however Barron & Ferris
 decided that if the husband dies first not having been
 injured reduced such claim in action & objection it is
 gone both ways & not to be recovered. But the 2nd & 3rd
 doctrine laid down in Longue Digue is approved 297
 & this doctrine says that if the husband dies first
 & the correct - after the lawyer of the 2nd & 3rd
 then back. I take it says judge there to be an
 acknowledged principle that a rule which
 demands destroying the symmetry of the law is
 wrong - & so vice versa what tends to preserve
 the symmetry of the law is correct. The 2nd & 3rd
 the doctrine in Longue Digue is preserved the
 symmetry of the law. I take it to be a good thing
 and I feel that in every case where a claim
 will survive of the wife upon the estate - the
 husband must join with the wife in an action for
 the claim. But it is agreed (not without hard
 that the husband may sue alone in any claim
 or claim in action according to the nature of the claim
 & a judgment is obtained in the husband's name
 alone - whatever may have been the claim & in
 case of judgment - if in the husband's - will survive
 to him or go to his executor. And therefore I would
 seem almost impossible that the wife & son in action
 according to the marriage were a mistake.
 and the husband might be liable for injury done to the

Suppose B. to die - If any one else can give a true
 statement of the facts - as he has done - then
 80 the remedy is the same as in case of a
 150000 given to a woman - & both must join
 205 in the suit - In the case of a husband
 whose wife is killed the husband
 shall attend to the matter - & the husband
 250 shall be responsible for the matter - & he is also
 300 The remedy is the same as in case of a
 350 the husband must join with her in the action.
 400 This is not an injury done directly to the husband
 450 but to the wife. This is the way in which the husband
 500 shall be recovered. - This claim or right of action
 550 survives & is in case of the husband's death
 600 & the husband's injury - by the husband or his
 650 or the wife or his action - & both can sue in
 700 their own joint names - & in the case of the husband
 750 the wife. The husband has been considered - & the
 800 latter goes under the name of damages - & the
 850 & the husband's name in the W. & the husband's
 900 wife (quasi contractum a wife) - & the wife
 950 there is the first & the second - the husband's
 1000 & the wife - but the husband's is not the only
 1050 one & the wife - she may be killed & the husband
 1100 & get no labor service or comfort as the wife
 1150 It may be an advantage for the husband to sue
 1200 her a good name - as in case of a husband - & much
 1250 as well as the wife's good name. The wife

[illegible]

on the other hand - in which there are a good
 many who are not - & some say - the action
 of the other is called upon - & sometimes
 in the end of the day - in case of criminal
 conversation with the wife - the wrong of the
 action is trespass & of course - but the action
 is in substance law - & the seduction - the
 seduction of a person - & the action from the
 right of the wife - the wrong of the wife is
 as well - however the law is not the same
 that an action in the case of a person
 would be in the case of a person - the law is
 the same as if it were a person - & the
 proceedings are a person's action - & the wrong
 & the action in other respects is the same
 thus by a person in the case of a person
 & a person in the case of a person are
 the wrong of the person are made

[illegible]

[illegible]

100 I see a woman who is not
 101 at all like the women of the
 102 the very old in America. She is
 103 in all - the same as the old. I am not
 104 decision seem exactly. I continued the same.
 105 But the manner of the people here in modern times
 106 appeared the appearance of more to want. Since
 107 last seen of the throne the wife is less respect
 108 and more in a common than a secret - for
 109 I am it is not the same as the old. There are brutal
 110 husbands. The same conduct is required as no
 111 law. Indeed, if a man is right to have his husband in
 112 any ill treatment. He is not in with a wife
 113 in his good behavior. There are however certain
 114 power in the law. I am not sure of the
 115 of the law. I am not sure of the
 116 contracted that if the wife is a good wife
 117 without any fault the husband may be
 118 not to bring her back. This power exists, I am not
 119 right in my services. I am not sure of the
 120 I am not sure that the husband may be
 121 I am not sure of the law. I am not sure of the
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I think it is the same - and I have a right to be consulted
 in the matter of course - In all other cases
 where one order is affected by a transfer and
 the person who does it is a servant or a clerk
 when the matter is that the married man
 told his wife & consented to it - he is clear & the
 wife is his wife & he is not liable. Again, what
 does she get out with him, & there some one
 might say - well in his presence - this is never said
 he is surrounded by & he is a little bit of a
 girl & could be done - & then the general & the
 whole married man - I think the wife is not to be

I think the wife was within the law, as she
 maintained the child in the wife's name, and
 paid the bills. Her natural and rational
 position. But the law is not what we
 the doctors, the wife have marriage - because
 the child is the husband's child - and the
 wife is the mother. I don't see how the law
 can be so. The wife is the mother - the child
 is the husband's child - the child is the
 husband's child - the child is the husband's
 child - the child is the husband's child.

There are cases as well as married where the wife having committed an offence shall be excused - on the ground of coercion - Offences of this kind are called mala in se - Thus it is a crime not to have the death in capital murder but this is not a law against a state's nature but a crime only the state of society - It is a crime to have in mind - The punishment being considered a mitigation. As in the case of the wife being as for herself - The wife is excused if she committed the crime under duress - If the husband alone is liable - The punishment is death. It is remarkable that not only is the wife excused but the husband is not. This is because the husband is not a person in the same sense as the wife is - In case of offences against the state the nature is mala in se - The crime is a person which is not maintained - The punishment is a death sentence.

etc will come in course of time. Baron & Son
are the owners of the land & the
ground is the property of the land.
The other part of the land is the land.

The wife saw more to an action after the 28-0
in case of the husband's death and his
wishes. But she does not to ensure the same
wishes she may be accepting before the death of her
husband as well as any other person who is to be
the subject of the contract made by the wife and his
representative in case of the husband's death. It is
the husband's - It is manifestly true that
the wife is expected to act in his best interests
and to be a good and true wife and mother
and to be a good and true wife and mother.

He is also bound by such an interest as are
usual in the contract & for a day or week & he
is however for the first & last time in the power of
man we are other words - these things are
not done

[illegible]

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The husband is bound by her contract (Baron & Femme
for necessities to himself where he does not
think proper to have her - If the husband gets
provoked with his wife & throws her out of door
or takes away her clothing & leaves her naked in
the way of the street - & the man who sold them to
her may charge them & her husband - he may
have an action of assumpsit - stating that the
husband promised to pay - that the wife was left
in want & starved with death - or let her go naked. & the
case will be the same tho he goes round
the town & tricks the merchants from selling her the
things she needs on account. he will nevertheless
be answerable for necessities taken up - & the
account will be standing in equity - If he is a man
of affluence she may have a better gown. But sup-
pose she departs from her husband & refuses to co-
habit with him the circumstances may be such
that she will be liable for necessities purchased
by her - Thus suppose he talks to her about choking her
to death - or cutting her head off & actually puts her
in the way of doing so - or the purpose of frightening her - she
is not bound to stay with him - but he is bound for her
necessaries. But if she departs from him without a reasonable
cause he is not bound for her necessities for ne-
cessaries. This goes against the principle that he
is obliged to maintain her even from some

Contract of the wife - Hence if the same man is
 servant & she with him - & she refuses he can
 sue for breach of contract - provided he has
 in the state with an adulterer he is not bound
 to maintain her even tho she returns in return
 & is willing to live with him. This differs from
 the case of her seducing a servant & returning
 turning tho he may even sue & recover if he
 is able. Suppose she goes with an adulterer
 & contracts a new service - the other man may
 sue for breach of contract - it is said the husband
 would not be bound - I have seen no case say the
 judge overruled the rule - now is it an agent &
 at the same time. The matter is bound by the con-
 tract of the servant where the servant has been
 accustomed to make new contracts - Suppose
 now the servant is discharged - the service is at an
 end - the servant is an unprincipled fellow - he
 goes to a store & buys goods - just as he had been
 accustomed to buy - the merchant is lost - the mer-
 chant did not know that the servant was dis-
 charged - in such a case the court will find that
 the man liable - the merchant acted a good and
 reasonable part - for he did not know that the
 service was at an end and our want of notice of general
 public notoriety. The wife is not liable either -
 when she elopes with an adulterer any more than

Contract of the Wife. He is his personal enemy - it is
 no more than reasonable that since he is bound
 to live with her, he should be bound to support
 his wife from trading there on his account.
 Suppose I suppose we saw some place if there
 were no other person in the place that could
 furnish her with necessities except his partner.
 his enemy - he would be bound by the contract with
 him. If the wife buys necessities it is agreed
 that the husband will be bound - But the wife
 buys necessities & sells them to her partner it is
 said that the husband is not bound by the contract.
 She supposes she has got a good thing out of the
 house - & she wanted more money & carried on.
 he may not be bound - yet as the husband that the
 husband's good which he usually does he would
 be bound.

143 unless the improper conduct of the wife can
 discharge the liability of the husband when once
 one liability has attached.

It is settled that the wife can never bind the hus-
 band by any debt in her own name - as in her
 own right - But as attorney she may according to
 the power she has - The debt itself would be void - so
 to the article he would be bound - & as he is
 in such liability in which she is the article is void
 is void - the simple contract is void.

143 part
 per. child

The law raises an implied promise - Baron & Esme
ie that he will see to the necessities of the dead
is void - the same is the case with bond given 6th.
to infant or necessities - the bond is void but 76
the infant is liable on the original contract.
We are told say Judge Keene that in case of a sen. 104th
bond by the wife for the loan of money to be laid out
out for necessities & actually so laid out - it is not 104th
binding upon the husband at law - but in Equity the 105th
rule is the reverse - see Parent & Child ^{203 &c} 7-8 - 54th
This is a case say Judge Keene where it is more - Hutton
Keene to have different rule in Equity & at Law 105
I think the rule ought in this case to be the same, 106th
in law as in Equity. See Power of Husband etc. 4th - see 108
If the wife be committed to prison for any crime the 108th
husband is not bound to pay for necessities. 108th
ruled so. This results from the principle before 120th
laid down that the husband is not obliged to maintain 120th
then in any where but at home - if there were need the
money away - or by his imprudent conduct is taken 100th
money by legal process he is not obliged to maintain 120th
etc.

as to ~~Settled~~ money owing to the wife before marriage by the
husband - If any bond due to the wife before mar-
riage we have seen what comes of it after marriage
the husband collects the debt as far as he can. ex-
cept those that are due from the husband - it is said

contracts between husband & wife - that upon marriage they are annulled. - It is true that they are annulled during the coverture - but after the death of the husband do they not revive as his assets. - If a man takes a bond and afterwards he pays it up & puts the bond into his pocket - his being ~~in possession~~ in possession will be evidence of payment - not however conclusive - the presumption may be resisted - for it may have been taken by force if so this may be shown Upon marriage all the wife's choses come into his possession - among the rest he has the bond which he before gave to her it is therefore presumptive evidence of payment & acquittance. The case is the same if the bond or note became due during coverture

Hob. who do such as become due after coverture is determined (ie) after his death - are these binding

Id. say. upon the executor. It has long been settled in England that they are binding - the question is are they binding com. in at law. I say that as a rule says Judge Keene that they are binding but at law & in Equity

Carth. if bond securing a promise to the wife was given to her before marriage & before property &c take effect after his death - it has been held in two cases but with a divided court that such a bond

is not good against the executor - Hobart & Holt the two

chief justices dissented from the opinion of the court

Contract between the husband & wife - In order
 to get the maxim that husband & wife cannot own
 114 tract - the court seems bound to do so.
 87 The wife cannot convey her land & her husband
 she is supposed to be under his coercion. But
 why cannot he convey her land & her - there is
 no coercion. - I apprehend that the court have
 that the maxim that husband & wife cannot
 contract has been extended beyond the limit
 which were originally intended. And though
 certain - there is much against this conveying
 estate & her interest - & there were - the law
 would be applied to John & John & John & John
 and their heirs together in order to convey and
 to secure the life of John. - John may convey
 116 John's land to John & John as tenants in trust - & the
 wife & John - John is not a tenant but a co-owner
 117 the title does not in equity vest in John & John
 118 then him like a tenant in fee simple, I apprehend
 119 says Judge here there can be no reason why he
 should not be allowed to convey land directly
 120 to his wife - the only reason which can be stated
 121 is that the maxim should be pre-
 served - the preserving which it can be of no
 utility. - & if this maxim is more a piece of
 idle parade in equity - it is a piece of idle
 idleness in which land may be conveyed

to the wife - is in the husband & not (Baron & some
 think & make he not a lien to his friend & agree
 with their mind & convey the same as a gift
 to his wife - This must be the mode of con-
 veyance in this state because we have no
 statute for conveying the legal estate to the
 wife in coverture.

As to personal property the husband cannot
 make any contract or conveyance & it is as if
 during coverture it were - however in equity
 contracts that the wife shall have certain ar-
 ticles - as the purchase of the sale of them - have
 been held to be good - Thus the husband agreed
 to give the wife all the wool & said by one thing &
 selling butter & cheese - & in payment of it - He did
 so till she got together 100^l - he never disputed her
 right during coverture & paid it - However he
 wanted the money & demanded it - the wife said
 the question was whether the executor could be
 compelled to pay out the bond & the Court held
 that he should pay it - It was not pretended
 that she was a co-heiress - & that she should be
 paid next after the debt was paid.

As to articles of agreement to live separately - the
 law does not recognize such agreements - how-
 ever they are recognized in the County Court
 where I am not sure - It was formerly more usual in

contract between the husband & wife - marriage is a contract - the same rules may exist here as in any such agreement. In law there are recognized as binding both at law & in equity. The husband has certain marital rights - which he may renounce & they are binding on him to the extent of the remuneration. If he has entered into a contract with her & allow her a separate maintenance it shall be carried into effect. If he has contracted to relinquish ^{his rights} for service he cannot after claim them. - but a contract for a separate maintenance does not release away all his marital rights - if the husband leaves her to live - he has a right to it - but if he contracts not to allow her a separate maintenance but to allow her all legacies that should come to her afterwards - he cannot have his right & such legacies. The wife living with a separate maintenance may do any thing or refuse any thing that does the husband no injury. If there be no such agreement with another it is nothing to the husband. If he undertakes to maintain her or wife when he should not - he is liable not in a suit in law but for a breach of the peace. In case of a wife where she was brought into a house & kept & claim the husband when he being a husband & wife

the husband was furnished for con. *Barrow & Paine*
tempt of work. If a husband makes a settlement on
a second wife when the wife is a separate woman 27
tenance - he renounces all right & title & custody & all
in that land. And therefore it was decided that 31
one might alien without issue - if he had any 14. 16.
right & title & custody he could not release it. But he
would be creating an estate in future. 2. *Wilm*
In a case where the husband conveyed & took a lease
sole & the wife it found necessary - there being a 28
separate separation - it was held that the husband was
bound to the contract. 2. *Perrin* 271. 272. 273
Husband gave his wife a note upon condition that a bond
if ever he treated her so again she should be entitled 38. 5
to a bond - the court held that the husband was
bound. It decided by the husband in which he *Simcox*
agreed to allow his wife a separate maintenance 75
Tenance was confirmed by a decree of court
Settlement of property when a wife by articles
of separation do not affect the rights of purchase
or creditors - unless there is a covenant on
the part of some friend of the wife or her trust
to indemnify the husband. That Court of
Chancery have often directed a separate maintenance 91
Tenance ^{where there were articles of separation} & it was decided to be under 102
done by all lawyers & judges as it is now until a term
ago - that in all cases of separation where 580

Contract between husband & wife - The rule is that
 1871 the wife is bound by an agreement - that is not at
 1872 all necessary and the power of decreasing a wife's
 1873 separate maintenance - some late decisions
 1874 have rendered this doctrine questionable
 1875 with the proviso made by a wife of her separate
 1876 ^{prop. ch. 257} estate are at her disposal. Mr Justice Buller
 1877 should say that a wife living apart from her husband
 1878 by articles of separation & having a separate main-
 1879 tenance is as if she were sole & independent & has power
 1880 except as to marrying again. It is clear that the
 1881 husband cannot in such case compel her to cohabit with
 1882 him - he has no right to seize upon her person but
 1883 if she agree to cohabit together it is a complete
 1884 absolute discharge of the covenant of separation.
 1885 Property devised to a female may be husband & co-
 1886 ^{property} tenant - the intention of the testator being
 1887 plain under that - taking the whole will to-
 1888 gether - altho it was no where in the will declared
 expressly to be his intention

as to contracts by which the wife binds herself - the
 gen. rule is that the wife cannot contract so as
 to bind herself - the contracts are void. This
 is the gen. rule but all agree that there are some
 cases where she may bind herself by her contract.
 The principle upon which the general rule goes
 is that the husband has a right to the person of his wife

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at right is now married to another Baron & some
rights he will not suffer his wife to be sold
or put in jail without him & if he is willing
the court will not allow it - The fact is that
under his coercion & she shall not in any
manner be bound to her contract - The true Brown
criterion by which to determine whether she is
bound or not is to consider first whether any
marital right of his can be affected by the
contract - & secondly whether the contract
can be in law made under his coercion. Now
I neither of these are in the case she was before her
self - The disability arising from coercion is re-
moved by banishment of the husband from the
realm of law - Neither can any marital right
of his be affected - No reason can be given why
she may not be imprisoned as well as a female
slave - Indeed this has always been admitted the
law. Coverture itself is no disqualification
but it is the consequence of something that dis-
qualifies the wife from contracting. In case of
banishment the wife is not a female slave but
is still she is civilly married - neither
there are the grounds of her disability - she is not civilly
married. The Lady Herbert could not marry
at all she had been married - so said the Eccle. & Civil
circular court - such a thing was never attempted

Liability of the Wife - When a man had committed
 leaving certain offences he might avail himself of the
 147 privilege of the clergyman and the particular
 248 of his offence & absolve the woman - will not settle
 249 nor is it return - it has been held that the wife of
 such a man may bind herself - So also the
 wife of a man whose name may contract - So also
 the wife of a man transported only for seven
 years was held to be bound by her contract - in
 the two last cases Judge Keene the husband
 would not be civiliter mortuus. But a wife
 having a separate maintenance & living apart
 from her husband binds herself by her contract
 no question even the judge has perhaps been opi-
 nated more than this in Westminster Hall. It
 was given as the opinion of Lord Hardwicke that
 a wife not being under the coercion of her hus-
 band might contract & be sued - This opinion
 was afterwards denied to be true & contradicted
 by the Court of King's Bench when Lord Mansfield
 sat. The case goes to all lengths to show that
 where there ^{are} articles of separation & a separate
 maintenance allowed - she will be bound by
 any bond given by her during that time. Give
 no more credit to the decision for that is on
 the ground of a separate maintenance. I agree
 to the decision said Judge Keene but not on the

around which some of them (Barren) were
given^{to} as well as around a separate
maintenance - I apprehend the true grounds
of the decision are - the agreement & live up with
it. It was a separate maintenance case & was
the case. It does not follow that because he is
not liable - she must therefore be liable - for if
she elopes with an adulterer & there is a voluntary
act neither the husband nor wife are liable.
The decision in the 10th 5 is in point but it
said that there was a different decision at about
the same time in the Court of Com. Pleas - & another
attorney in the same bench - This I cannot
edge a question raised - but if it be considered
upon the ground on which I place it - no decision
to the contrary will touch it. The Judges it is true
have sometimes shown symptoms of disgust at
the decision which I am attempting to support.
In one case where the court showed a disposition
to overrule this case Justice Buller went out - all
went out. - If any marital rights of the husband
affected where the wife lives apart with articles
of separation & makes contracts. - He renounces
all claim to her person - she may therefore be sued
& imprisoned without affecting his rights - though
she under any circumstance of the husband at the time?
cannot lose - She has all the liberty of a free wife

1409.

Liability of the wife - This is introducing no new principle - I do not hold say the judge that the wife is liable for her contracts in the same way that she has a separate maintenance but upon the ground of her living apart from the husband & black by article of separation & ag. this idea no case will be found to militate. In the cases cited as being opposed to this idea - is where the wife was seduced - she pleaded coverture - the judge replied that she had eloped &c - which replication was held ill on demurrer - this case in no manner paralleled that of Baron Polsewitz - as there had been no sort of agreement to separate - she ran away. another case is that of Leach v. Burt - This was a voluntary separation by agreement but none in writing - it was only a common law rule - The law does not regard such agreements unless reduced to writing - the husband therefore could put a period to the separation at any time - he had in the view of the law relinquished none of his marital rights - he had a right to sue his wife at any time when I want you for a wife against all law you. His marital rights intact here he injured & upon this ground the decision is correct. another case was 20th where an action of assumpsit was brought as the wife for goods sold to her - to this action the wife pleaded coverture - replication that she lived with an adulterer

that the husband had been married & Barne Lawrence
but in this case - there was no covenant of
separation - & the action was not sustained - its
main point in this case is like that of Barne Polen-
witz - The court is in true say that the ground of
their decision was that there was no separate main-
tenance - but they would have said there was no
covenant of separation & on the ground gave judgment
if other case was where there were no articles at all
separation - nor any maintenance except a temp. & so
everywhere pending a suit before an ecclesi-
astical court - during this time the wife made a
contract but the court held she was not liable -
this case has not the least resemblance to that of
Barne Polenwitzer - The Ld Kenyon showed very
great disquiet without case - the Justice Lawrence
went upon the true ground in giving his opinion
he said the action could not be sustained because
there was no covenant of separation. In the 18th 604
is another case but it has no resemblance to the
point in question - The wife in this case lived sep-
arately from her husband & carried on the trade of
Hawker - she made a will & died her executor
was named - now if she could not be liable her executor
would not but that he could not in clear because
the property belonged to the husband & Lawrence said
that a wife could not acquire property of her own.

Liability of the Wife - In the 8th. 5th is another case
 This was the case where Butler left his wife. I
 advised Judge Page here that the Court in this
 case intended to overrule that of Barnard & Davis
 But this decision independent of the opinion of
 the Judge does not stand as law & that of Davis
 still rules - The husband agreed with the
 wife to pay her a separate maintenance unless
 as the wife would consent that he should be
 absent - But there was no agreement to live sep-
 arately - only to pay as long as they should live
 & live separately - All this is consistent with
 the doctrine before said above - he could not claim
 her as there was no consideration. It is re-
 cited as a lease not will - its continuance de-
 pends upon the will of both parties. There is
 as to the question whether a feme covert living
 apart from her husband by act of separation
 & having a separate maintenance may bind her-
 self by her contracts.

One case there is where the son contract to a to
 bind himself to live with his husband. She
 cannot convey her land during coverture except
 by fine & common recovery. If her husband win
 with her in buying a fine or suffering a common
 recovery the conveyance is absolute. She being ex-
 amined by a magistrate whether she had or not

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If she lives a fine or suffers a common Baron & Feme
recovering herself - without her husband or his
heir & her representatives - but if the husband dis-
sents he may destroy the whole contract but
if he does not dissent during his life the con-
veyance is absolute & the wife's death. In this
transaction she is considered a feme sole - or
as feme will have it quasi feme sole - If she had not
been, say they, the court would not have suffered to take
a recovery - the presumption therefore is that she is
now a feme sole. Fine & fem. recovery are in effect the
same - both being fictitious actions at law
- only the parties in the former make a conveyance
promise of their right - but in the latter the act is
after judgment made in default. But how can it be
the wife convey her lands in this country - we
have no such species of a conveyance as fine - or com-
recovery. She may here convey by the common
mode of conveyance (i.e. by deed). Her husband
must join with her in the deed to make the con-
veyance valid. - What if she make a deed of con-
veyance without joining her husband & he does
not disavow it before she dies - it is gone forever.
The husband before marriage covenanted never to dis-
incumber with the wife lands & that if she wanted
to sell them he would join with her in the conveyance.
She made a conveyance in her own name alone & died

Contract of the wife - This was held to be a good con-
 veyance - But if he had had a child born then
 who could have inherited it - he would have
 been entitled to custody after her death. The
 maxim is that no estate can be created to com-
 mence in future. The wife therefore cannot
 convey her estate & commence in possession at
 the the custody of the husband is determined.
 But cannot she limit it as a remainder upon
 the husband's estate - his is a life estate. Here
 comes another maxims - that a rem-
 ainder cannot be limited upon any estate that
 does not commence at the same time with the
 creation of the remainder & by the same mode
 of conveyance. - But the husband takes his in-
 terest by virtue of her title - his right cannot be cre-
 ated by any act of hers because it is created by an
 operation of law. She is not barred of her right of
 conveyance ^{as a rem.} on the ground of co-ercion - because
 co-ercion is no consideration in a fine or recovery
 nor because any marital right of the husband
 is violated - for a conveyance of that kind does not
 operate till all marital rights are extinguished.
 I contented say Judge Keene that the wife may con-
 vey her estate to commence after death in law.
 Nothing prevents in law. But the maxim that an es-
 tate cannot be created to commence in future.

But in some the maxim is not law. Warren & Gurne
it is annulled by legal implication. We have
a stat. by which land may be given to the im-
mediate descendant of any one in being. It
may be given to the issue of the youngest child
in being. In this way an estate in future may
be created - that which is good by way of de-
centry devise in Eng. is good here as a consequence
Suppose the wife has land given to her by deed
or devise - or coming to her by descent - can the
husband so disagree to it as to destroy her title
in case of their kind is to be & vice - the books
are all as silent as the grave on the point -
can he dispossess the wife of her title when once it
is vested in her? Must every right of hers be
subject to his will - & he be a tyrant & a despot
over her? There is a reason for saying so - per-
haps why he may destroy her title - & that is - that
his rights may otherwise be affected to his disad-
vantage. It seems clear even what is said in
books & papers that his marital right may be
injured - & he is compelled as his wife & he
live together - he will be liable to pay taxes
he may not think the land is worth enough
to encumber them. Or perhaps he does not want
the plague & trouble of it - in other case but in
the books it is said the wife may have a lease for years

Baren & Some - It is not to be considered that the
 wife may create a naked trust - that
 were she to be interested in it - as if she de-
 cide to a man wife lands &c. &c. &c. &c. &c. &c.
 matter whether the land be made &c. &c. &c. &c.
 since marriage - as if she land are given &c. &c.
 107 to a man & a woman who the husband
 of a wife in a condition. On the husband must
 have no prejudice by the wife - the wife is
 always that in case of the husband before the
 power to act - if so the the power may be exer-
 cised by the more exercise of his will.

If the legal title of an estate rest in the wife
 as trustee for another - she may convey without
 her husband. However there are a few cases
 in which the wife is not allowed to convey
 the other the husband is not allowed to convey
 as if he is not allowed to convey the wife. This
 decision has been given in the case of the
 the marriage that the wife can convey her estate
 equally applicable to the husband & the wife.
 as more power of the husband to convey the real estate of the
 wife - if the husband is not allowed to convey the
 wife's estate alone - as if she is not allowed to
 convey the estate of a husband & a wife
 jointly - if the estate during the coverture is not
 and the case is the same if she join the husband

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in the conveyance of her land - unless Private Relations
is fine or recovery - here she would be bound and
the land.

as to the power of the wife after the death of the husband
to waive her contract made during coverture - if an estate
is conveyed to the husband & wife during cov-
erture - she need not accept it as to her part -
indeed she cannot because she is under no coercion
but after coverture, she may accept or refuse
if the wife joins with the husband in a con-
veyance - not by fine or recovery. she may waive
it after coverture - or condition it - Thus suppose
the husband leases her land for 40 years - & here
the end of that time he dies - she will not be bound
to continue it - but if she is bound it is as to the whole
land rent - she cannot waive the lease. From these &c
rules - men judge there we call that contract
during coverture - concerning the wife's land
are not void but voidable. Where the wife at
the coverture is determined to assign a lease of
her land - made by the husband & herself dur-
ing coverture - she will be bound to the next
generation - this is case of a contract - but
the difficulty is in a mortgage - he is not
tied to the advantage - but is not what be-
came due during coverture. This is the case
in mortgage from the principle. If the husband is

Baron & Feme - & wife we must answer & a law & it
 shall belong to the survivor when the death of one of the
 120 is accomplished. If a lease be taken by husband
 & wife jointly - & during rent - & when he dies
 126 she agrees to it - she must continue to pay or it
 suppose a woman is leased for life or years, pay-
 ing rent - rent becomes in arrears & she marries
 a husband - is she liable - the husband will be liable be-
 cause he enters with his wife - it is clear that if
 survives as he - but suppose rent had accrued
 130 before during coverture - & he dies - who has it to pay?
 134 The executor of the husband - & if she dies & the
 executor has the husband would have it to pay - The husband
 138 is bound hence arise his liability. It seems then
 142 that a husband is responsible to change his creditors
 22 in this case - & this too by operation of law - as in
 the case of which is not the case in the whole
 course of law. It leaves to B & C husband & wife
 the husband commits waste & dies the wife al-
 146 loms the lease by occupying the land - she
 will be liable for the waste committed by the hus-
 band - otherwise if she wastes the land before
 150 she marries. If the wife agrees to pay a fine of the
 154 land before marriage Chancery will decree it
 against her after the death of her husband & it
 158 would seem correct also with her husband & executor
 162 & the husband with warranty is liable on the

covenant of warranty. — the deed Private Relations
of a home covert relative for time is an ^{express} ^{contract}
which under her as a line would be.

Contract with to a woman that if she would
marry or if she would be her husband — she ^{may} ^{release}
of cannot release ^{unless by deed} ^{the} because he has no in-
terest in it at once, it corresponds with it &
have her ^{husband} ^{jointly} ^{severally} the husband &
cannot release it. The case is the same of an an-
nuitant left to a wife — he can in general release
after choses in action but he cannot release an ^{estate}
annuity — it is real property — an incorporeal ^{hereditament}
hereditament — he may discharge it, that would
accord with coverture but no more
a wife may suffer to lose an estate by the negligence
of her husband — where the duty of the estate
the preventing a direct intent where it is
the fulfillment of some positive act or con-
dition — as in case of a fee simple determinable upon
the non performance of condition — she cannot
perform the condition perhaps unless with the ^{aid}
aid of the aid of her husband. as of an estate ^{life}
for life during her life — with condition that if ^{she}
be not paid the annuity to be void — but as
to condition annexed to an estate by deed & not by
the act of the parties — the wife is not to be prejudiced
if the husband neglect to perform the condition.

Baron & Feme - This in several times every where
 to let was to take an oath of fealty - & a great neglect -
 155 tested his estate - but the law was not made in such
 a state to come down to.

21 As to when the husband must join with his wife in a suit
 160 24 The general rule is that in all cases where either the
 165 33 death of the husband the cause of action would
 170 survive to the wife - the husband must join in

419 the suit. Suppose some land got by gift or the
 175 wife's land & the husband would not get him a
 180 wife the wife must join. Suppose a suit is brought
 185 brought upon a note of hand given to her before

200 marriage - or suppose any injury had been done
 205 518 to her land - or trespass - or to her person or to her
 210 212 in a personal battery - In all these cases the wife
 215 30 must join with the husband in the suit. The

rule is an unqualified one - the husband
 220 must join in the suit of the wife. Elsewhere
 225 226 two writers differ say that if the wife be
 230 231 the before marriage the husband may sue

235 236 alone - but no case can be found to support
 240 241 this opinion - one of the cases cited is where a
 245 246 bond was given during coverture concerning

250 251 goods & where that the husband must sue alone
 255 256 to recover. However before marriage & con-
 260 261 tract after marriage. The legal principle is
 265 266 in the case of coverture the husband must sue alone

The trustee is a married man (Priscilla Hamilton)
in a similar position to that now relating to the
other cases. In the latter case it was held that
that the wife does have some share in the wife
and that the husband is the lord & proprietor
and is entitled to the debt due the wife before 1760
marriage would survive to the wife - but as to the
debt due which accrued after 1760 after marriage
he may sue for them alone. But why
may not the wife sue alone for debt due to her?
We are told that they bring to the husband the
money & that he is to use it - that is in that
the wife is obliged to maintain any
action in her own name - the wife alone - that
the husband is to use the money - but this is
not taking away the wife's right to sue
if it is not the husband who is to sue alone - the wife
alone is to sue the husband alone. It is as
if the husband is to sue the wife alone. The true
ground for this is that if he is to sue &
sue alone - however he is to sue the wife may be
observed that she may wish to bring a separation & the
suit - she after separation would not be able to re-
cover the costs of suit - she has no property in it
the property is her husband's - that she cannot
be empowered without her husband in a civil
suit has been shown before.

[illegible]

[illegible]

Barn. & Fane imply a promise to the wife and to
 her services are the main motive cause in
 the right of action. & in such case the husband
 142 and must sue alone. The defendant in an
 156 authority to prove that an implied contract
 for work done by the wife the husband can sue
 162 join the wife. In the case of *Briggs v. Wood*
 185 the Judge differ respecting the question whether
 or the wife could be joined in an action of
 trespass *Quare clausum fregit* on the land of a wife.
 The decision of the question says Judge Peck.
 I apprehend depends upon the nature of the in-
 jury. If the trespass affected the inheritance
 by doing damage to the house - destroying trees
 or plowing the soil she ought to be joined, for in
 such cases the action will survive to the wife
 on the husband's death - but if the injury was
 to the comfortable it would not be necessary
 to join the wife - for such cause of action would
 not survive to her yet her property being the
 meritorious cause of action - the husband in
 170 his election to join her or not. In *Briggs v. Wood* we
 find it said by the court in a case where a prom-
 ise was made to a female servant in consideration
 that she would serve such a term - to pay her
 172 - that if the husband - such cause of action
 would survive to the wife & then joining

to some modern decisions where the right of Reliance
 is given to the wife during the
 estate & not before the husband dies - The
 right is given to the wife. It is
 difficult to discern the principle on which
 such decisions are founded - for there is
 no question - but that the husband was one of those
 entitled to the wife & recover all the estate the wife
 is entitled to account of during the husband's life and
 in the principal case - the husband was given
 a life interest in the wife - It is
 true that by the country of descent when there
 is an express promise to the wife the husband
 may lose the wife - but in such case - it is not
 because the wife has any the smallest interest
 therein. In Code Chapter 699 - there is a case of
 an estate in reversion granted to Barry & Anne
 & the heirs of the Baron in re - The Baron brought
 an action in reversion against the tenant
 to recover damages for non-repairing the house
 according to the covenant in the lease. It
 was objected that the suit ought to have been
 in the name of both Barry & Anne - as both
 had an estate therein - But the Court held
 that it was not material - the action is not
 the action for a personal for damages only it might be
 brought in his own name - The judgment that the action

Baring's Fine - is well brought in correct - but not
 for the reason given - The truth is - no estate
 is given to the wife - it is not an estate for life
 in the husband & wife - with remainder in fee
 to the wife at the husband's death - I had accordingly
 the wife well known only in Muller's case - where
 an estate is given to the wife & the terms
 in him are used - it is a fee simple in fee the
 word now being a description of the quantity
 of the estate given - I conceive in this case the
 husband took the whole estate in fee - & the wife
 took nothing - so that the wife could not have been
 joined in the name together with him
 where the husband & wife were in an action & then
 judgment - when the husband might have said now
 if the husband dies before the money is collected the
 judgment survives to the wife & the wife of the judgment
 of question may perhaps arise in that country where
 we have no judgment whether the wife shall hold
 it as the executor of the husband - or will she hold it
 as trustee for the executor. I therefore say Judge Keble
 that the arrival of the judgment being & then can here
 & upon other principles. I should be inclined to think
 that the wife should be a trustee for the ex-
 ecutor & the wife judge not and that a mortgage
 should not exist to her in another light. This is all
 true - the wife is not to be a trustee & give it to her.

But a joint judgment of this kind Private Relations
not collected before the husband's death is liable for
the payment of this debt in case of delinquency of
either or both.

If an action be brought to recover special damages, e.g.
and consortium against - as one is leaving the wife, then
there is an issue in the matrimonial cause & the action 140
where cannot be joined with him - but whether
the person in this case is the matrimonial cause, action 146.

Thus as far as the husband & wife may be
together - as to where the wife is to be sued with her husband
as in the foregoing case & married, let it
be in the possession - then how is it in the land
but the wife must be joined in the suit to recover
the land - e.g. - ~~husband~~ married - the married
the question is - will it survive as her in the husband
is before it is collected? - It will - & therefore she
must be joined. Again when a wife goes & throws
down her husband & goes & married - the action of
action will survive as her & therefore she must be joined
and with her husband - as in the case of the woman 151
tally thrown down & during the marriage - but when
she goes out with her husband & while in his arms
he throws it down - it would not survive as her,
therefore she must not be joined. But if she is
a wife & married - must also be joined as in the case
in the case of the wife & husband & action would not survive, see

Barren & Feme - The case must be decided in the
 court to the husband in toto - & he alone is liable
 & a battery be committed both upon himself & his
 wife - there are two distinct causes of action
 and two distinct actions must be brought - and
 must be brought in the name of the wife in the
 battery committed upon himself & that he may
 win a good verdict against the battery upon
 his wife - an action may also be brought
 in the name of himself & wife to recover damages
 for the battery upon the wife. - Suppose the
 husband & wife are sued for a battery by the
 wife & the jury find the husband not guilty
 no judgment can be rendered as to the wife. The
 jury should have found a verdict of guilty or
 not guilty - but the wife alone did in fact commit
 the battery. But if an action be brought in
 the name of husband & wife - for a battery upon the wife &
 028 the jury find the defendant not guilty as to the husband
 & guilty as to the wife - the verdict is an
 right & judgment may be rendered - we have
 had one decision of this kind says Judge Keene
 in this state.

as to the Power of the wife to Devise - It must be
 kept in view that the husband cannot be impeach-
 ed by her devise. The rule is that if a woman
 has property & can devise it will not

impairing the husband's share by Private Relations
 the same law device etc. In Eng. & in France & other
 continental states etc. — we have nothing of
 this kind. It is that allowing the wife to dispose
 till the last session of our Legislature. But the
 question may still arise whether this is an
 affirmation of the law as it is not. Where no right
 of the husband is infringed any large license
 of exchange she may have otherwise at law. Law
 has decided several decisions on the subject
 in England — There was a practice that the
 husband signed the will with her it was thought
 to be good — afterwards it was about that there
 was no signature of the husband. An honest
 Lieutenant Governor — when he was judge of probate
 held that the wife could sign & establish
 the will — This was carried up by appeal to the
 Superior Court & reversed (see Adams & Kellogg in N. S. 185
 & 1856 & another note 408) This case was carried
 up to the Supreme Court of Error by writ of Error
 & the court said the wife could dispose of that
 the judgment of the court of Probate was affirmed
 & that of the Superior Court reversed. Governor
 Huntington when I conversed with Judge Hall as
 very accurate lawyer said that the wife could
 dispose. The superior court decided lately that
 the wife was the owner of disposing & this is unanimously

Having found - not upon writ of *Recess* - the *Recess*
 Law of *Recess* before the late reorganization
 reversed the decision. This brought on over
 the *Recess* question, allowing the wife to
 decide. This question has been decided in
 a case which always seems clear in our
 mind - all are convinced that the *Recess* is
 correct. - We will have said the judge that when
 the *Recess* principle of law was established with us
 said she is correct with the *Recess* *Recess*
 This is a reasonable *Recess*. A *Recess* is of
 more importance in law than *Recess* *Recess* - the
 judge that the wife is with the *Recess* of
 her husband - the *Recess* - but will not be
 apply equally to her power of conveying by deed
 & recovery. - Wives are to be sure to go before a
 magistrate & there be examined whether will
 act with a free will. But this ceremony is the
 judge I regard as less than the shadow of it,
 make no effect. Many ancient authorities
 must be produced to show that if the husband consent
 or the will of the wife will be good. See the *Recess*
 10-176 5th ed. 81-89-17 80 - These authorities do more
 seem to imply, that where the husband does not
 consent - the will is not good. But it is remarkable
 that all these cases were where the husband's consent
 was concerned. & will not open up the *Recess* of *Recess*

However, & after this I should say Private Relations
 that derive of the wife are not good generally
 & with the reason. Because she shall not be allowed to
 dispose of the husband's goods. - It is blamable to have
 a wife who is thus made of a possession that. With
 these were cases where she may make a will 11-907
 However, further say it is usual for the wife to
 devise her dress & ornaments - Here we have the & have
 wife moving to the husband's independent of her own &
 cannot - as far as husband is. From this it all
 seems that the only disqualification was that
 the wife had not property at her disposal ex-
 cept her paraphernalia - but the same objection
 would apply to a poor man - having no property
 There was however one species of property anciently
 called dower not often in ecclesies - taken at the time
 of marriage by the wife in lieu of dower 101
 which was her ecclesiastical - the husband could
 not alien or devise it away from her. This prop-
 erty as we have it from the 12th to 14th Stafford
 the wife may dispose of by will independently of
 the husband - it being as he cannot take it back. - Here
 of course the same doctrine is advanced by St
 Lord's case - who speaks in no other way that
 the dower of a married woman & dower should
 be controlled. Every species of personal property then
 belonging to the wife is in nature divisible - a mar-

Barren & from a married woman might be devised
 the position which I am endeavoring to main-
 tain is that she may devise it without the
 consent of her husband. She authorizes go to
 prove that her husband is necessary where her
 husband is concerned (for no more). She has
 the wife at that time alone having her own
 property - but if late years the husband had
 to give the wife separate property.

7401 Let. H. A. D. he is already recognized the doctrine
 19080 that a married woman having separate property
 11000 property may devise it away - & Lord Thurlow said
 214 that a feme covert having separate personal prop-
 215 erty was competent to devise it as an unmar-
 75 ried woman. And it has always been admitted
 1100 to be law in equity - nobody questions it - that
 116 when the wife is possessed of separate
 11000 personal property she might devise it. And
 10 that she might devise her real property as well
 1100 as personal property held separately were it not
 105 for the Stat. 34 Hen. 8th which created a dis-
 1100 ability in the wife to devise real estate.

126 - 2 Ven. 518 - sixth 700 - 1100 258 - 2 Ven. 100-75

- In 1802 it appears that the husband had
- renounced before marriage that the wife should
- have power to devise her real property & that she
- did so devise - & it was held that such devise was

for by the Stat. 8th Hen. 8. she was Private heretofore
rendered incapable of receiving realty & thereby
it that the husband could not remove the dis-
ability created by Stat. - & that authorities were
produced to show that the husband's agreement
did not render the will of wife void. The court
observed that all the cases were of wills of per-
sonal property & said that there could be no
doubt but that an husband could give his
wife power to dispose personal property - but not
real - because the Stat. forbade it. It would be
conclusive that the com. law never created any
disability in a wife to dispose more than in
any other person - for if it did the will of the hus-
band could no more remove a disability created
by com. law than one created by Stat. (Hewitt's case)
The assent of the husband therefore is not ne-
cessary to give validity to the wife's will of her
separate property. It has been decided that 11 Mod
if the wife make a will of her separate property & 211
the husband dies & then she dies - the will is good
as if he chose in action - no marital rights
are affected.

21 Mod 92

The wife may dispose of things held in right of her
separate by will - & that without the consent of the
husband - as if she be executor - & she may make her
husband executor. see (Hewitt's case) 21 Mod 92 - 42 Cent 52

Baron de la Roche - as to the right of the wife to devise her
whole real estate. Before the Stat. Hen. 8th the wife had
805 the same power of devising real estate as her
806 husband. provided it was with the consent of the husband
81 & she could surrender her copyhold estates to the
plena iura of her will. & will of her ^{personal} ~~real~~ made by her
808 will during coverture is good if the husband dies
first. - Since it is a common thing to devise her
real estate her husband has got one third part of her
husband's ^{personal} estate personal. either the Stat. of Wills was
809 passed created a devise of real estate during coverture
by will covert. the husband dying before her
810 the wife. The court in this case did not rule
here that the will was not good at common law - but
under the Stat. she could not devise real estate.
By the Roman law a married woman might de-
vise both her real & personal estate. Few cases
have occurred during up the doctrine in modern
811 times because of the Stat. of Hen. 8th which
812 took married women from devising. One case
is to be found where the court held that a feme
813 covert may devise her land to her husband where
it is the custom of the country. another case is to
be found in Brooke's Cases Pl. 18 where it was held
that a feme covert might devise her land where
by custom lands were devisable - but could not
devise them to her husband because the husband

being in his power it might be the Private Relations
 seemed to have been done by coercion. But there seems
 to be no objection on the general ground in either
 case to resulting from a state of coverture.

In those of the states there are where there is no
 such disqualifying marriage from devising
 but broken down, helps leave that a married
 woman may devise her separate real estate
 The Stat. of 1800 which does not extend to the same
 in some of the states. But Legislature enacted
 a Stat. similar to that of Kentucky - excepting like
 that none may devise - but not like that making
 an exception as to some covert. Why did it not
 make an exception as to some covert like the Stat.
 of Kentucky - if there were intended to be excepted
 The words of the Stat. are all persons of the age of 21 years
 of right understanding & memory whether excommunicated or
 outlaws (not otherwise legally incapable) may devise. This
 does not prohibit married women - but leaves it
 at common law or rather ~~the~~ the meaning of the exception
 implies a permission to devise.

It is well known in some of the States that books
 that a marriage is a revocation of a will made by
 the wife when sole. This however is the law of the
 majority, not more so - it is the dicta of judges
 but no decision upon it the position is ma-
 ny a time is asserted & certainly & destroy the will

Baron Hume - ~~was~~ rather prevents the operation of the will as if the wife dies first &c. - but it is not here a revocation. If a woman marries having disposed of her personal estate by will it is a revocation because her personal property all goes to the husband upon marriage except her separate property - & there is no separate estate as the devisee for the will & operate upon. If it is said of her devise of real estate - I do not apprehend that judges have that marriage is in all cases a revocation of a woman's will. It is necessary to be more in order to give validity to the will that she be not a feme covert at the execution - as & also at its confirmation. Hence Engham states that Kent's case is by the statute. He is correct in that & does not say any more. It is stated in the case of *Good & Hamilton* that marriage was a revocation of a will of real property - made by the wife - which still in fact appears to be the same case - It is stated that a devise made in a marriage by a feme covert is not valid - The other judges had said that the will was valid - but it was because at the time of making it she was independent of real property by reason of the fact that a wife devies her share in a husband's estate at the death of the husband - such devise is good.

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as to the separate holding of the title separate relations
between husband & wife of real & personal property. Both
by the husband & wife. Property may be given
to the wife & wife & separate use by any body &
by any legal mode of conveyance or by deed
or will - it is not necessary to use the words
"separate" - but any other words that import
separate use are sufficient. Commonly it was the husband
who gave the property & trustee in trust for her
she having the beneficial title - the legal title both
being in some other person. In such case she
may do what she will with it without the husband or
trustee or trustee's consent - & for a certain length
of time she may use it for the separate use; but after that she
the trustee has no control over it. Her death has no
effect on the estate or on her trust. This was the law
at first, & late it is no uncommon thing by a will
the estate directly to her - under separate use
without the intervention of trustees. & since 1840
now almost occasionally with effect, the law is
now settled - If a legacy be given to a wife & should
or she should use her receipt as it is sufficient & the
advantage of the occasion. It has been made a
condition in the trusts are necessary in the
case in which the husband & wife are the wife then
to prevent the creation of the husband's estate
to which it is not given. But the law is not

17. and some that the husband was to take charge
 18. of the household and the wife was to be
 19. out of the house & to be maintained. - But where the
 20. husband gave land to his wife, as was the
 21. 190-estate case - it was held that it was good by the
 22. 191. law. - And the rule is given by the husband
 23. 192. and wife were held to be the separate property
 24. 193. in case of a sale of agreement between the hus-
 25. 194. band & wife to settle land when the wife is
 26. 195. separate - it is a separate use as between them
 27. 196. but in the separate property of the wife is
 28. 197. not to be lost during coverture. - It is set-
 29. 198. tled that it is - & the mode of getting it is
 30. 199. by bill in Equity. an agreement by husband
 31. 200. & wife previous to marriage is not binding
 32. 201. by the marriage. a settlement made by a
 33. 202. woman before marriage of her estate & her
 34. 203. separate use without the knowledge of her hus-
 35. 204. band will not bind him. A husband prom-
 36. 205. isses his wife that if she will sell her land
 37. 206. & let him have the profits - that he will
 38. 207. leave her & that agreement - that although
 39. 208. executed previous is not binding upon the
 40. 209. husband. For if the husband should give a
 41. 210. bond to a third person in trust for his wife
 42. 211. in performance of such promise - making the
 43. 212. bond a condition.

[illegible]

On marriage - See wife is a domestic woman
city - attention is required - she may be
pleased in her own home as well as the man -
so of a separate maintenance should be
made.

as to settlement - once settled when the wife is
satisfied - marriage by a minor - is void - it can
be annulled in that a minor may require his
contract - but in this case laboring very well in
testimony its value at the time of the contract
are allowed to make the principal contract for
on marriage - the husband shall be bound to his
wife settlement - when he - this being incident to the
marriage & necessary - for the marriage is void
until it is settled to be the principal contract
for the support of the wife & child
Marriage settlement - see under contract
See. It is an important one in other words
the wife is bound to give the wife settlement
& support & give of her - as it is in case of a
minor's settlement - as to a minor's settlement
to a minor's settlement - as to a minor's settlement
- as to receiving a settlement by a minor
- she is a minor cannot do so - other than by
to some extent is bound to a minor's settlement
- as to the - she need not receive a settlement
- as to the - as to the - as to the -

It was a voluntary Private Relation
 between a wife and her husband
 in a private - & the same in the same a little
 more open in the. The saying is - that the
 parents indicated at the time of marriage
 it was a voluntary relation - but in the same
 in the same as conveyed - but in the same
 to be indicated at the time of marriage - that
 the father in the same prior & subsequent conditions
 little more however made known & was by a
 wife to be a distinct ground - It was a
 settlement was made in consideration of a man & his
 wife they are not transferred - a certificate in 6
 was merely a good consideration - but a certificate in 10
 is one - it is a certificate in a good - the same 100
 but although the credit is the same at the time
 of the settlement in good - but in the settlement costs
 be not limited to her price or value - it is a good 400
 as a certificate - as it is more limited & in the same
 after the determination of the wife of the same 10
 wife, of the marriage settlement - after marriage in 10
 of a settlement after marriage is made in the 20
 consideration of the wife of the same received & 100
 be received - it is good as a certificate - but 175
 it be made in the same of which there is a
 receipt, as if the property of the wife is the same
 of the same - who receive & deliver in the same of the same

Baroness. Some - a settlement made on such condi-
tion is good. If a settlement is made before
marriage - & afterwards a settlement is made
in consideration of a large portion received the
latter settlement may be fraudulent - where
a settlement has been made when the wife is
in separate allowance & the husband becomes
a trustee - the husband is bound to maintain
the wife & not the trustee - & the wife is entitled

to the same. If a settlement is made
after marriage differs from a separate main-
tenance - the latter being subject to the con-
tract of the wife - the former not - & the wife is
entitled to it.

If the husband takes a mortgage & himself is
a joint wife - what becomes of it in the event of the
husband's death? Where the mortgage is
made before it would be subject to the wife.
But where it is made after there is no such acci-
dent - & the wife has no claim to it - & it would go to
the husband's estate - & the wife is not entitled to it.
If the wife is a joint wife in a mort-
gage - she is entitled to the same as the husband - &
the mortgage is a credit to the husband - & the wife
is entitled to the same as the husband - But where
the wife is a joint wife in a mortgage & the
husband is a trustee - the mortgage is a credit to the
husband - & the wife is not entitled to it.

The following seems to be the appropriate relation
the woman is bound by a duty of support & to take
an actual conveyance - Tho it seems to be a general
principle in equity that where an actual conveyance
seems will bind her - a conveyance & conveyance
in equity in the same manner. Indeed I
quite sometimes consider that the same which
ought to be done. If the wife therefore may legally
convey - why may she not convey & convey.
Perhaps in equity their principle that she
cannot convey without being immediately claimed
as if she did not - would be an objection with
them - But say Judge Keene I know no reason
why she should not be bound by her deed - I do
not decide in one case in the other. However
perhaps I have not much confidence in the de-
cision. Suppose her husband was in a mort-
gage of her land so much money borrowed
the husband & she afterwards borrow more
money - the land will not be redeemed till
all is paid - but suppose she had said £100-40
it is - But if the husband dies before redemption
then his personal estate after debts paid shall
be used to redeem the estate. He is a volunteer contrib.
but she shall be repaid before the other contributors. 173
However suppose someone that she may give the £100-40
to him & so much will rebut the right of claim. 201

Barens Force - In the wife mortgagee her land -
 with the mortgage of the land during her husband's
 life she shall stand in the place of the mortgagee
 as to the estate if it is mortgaged & hold it as the heir
 till the debt be paid

as to the bare settlement of the wife - If her hus-
 band has a settlement - she by marriage acquires
 a settlement in the same place. But if he has
 no settlement - the settlement of the
 wife is more & it is before marriage - If she
 never had any settlement - it is the duty of the
 husband to provide for & maintain her
 & charge it over to the husband. The wife never
 loses her settlement by marriage till she mar-
 ried another - & she never gains another unless she is
 betrothed by the first. It is still however that if the hus-
 band dies away - she may receive back & be

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- **old settlement.** In Eng. the wife by marriage
 - does not gain a new settlement - & the old settlement
 - however settlement is said to be suspended during her
 - husband's life - & after the death of the husband she
 - takes it again - But say, she have & receive
 - the second time in the state is that the
 - wife by marriage with her husband gains a
 - settlement with him - or at least after having
 - been common with her husband one year
 - in the place of settlement

By what we are told are the private relations
between the two countries which the respective
governments are observed. - These relations
marriage not common according to law are held
only permitted by a treaty. & were more
sufficient to give the wife a little more. We
have a law describing the mode of celebrating mar-
riage - but this are not excepted and the real
bond of matrimony is given conformity to
it. Love & affection is in the nature of gall
in a without a sufficient profit that there
can be marriage according to law in the state
we have a law by which one gains a settle-
ment by the means of marriage - & this is the
reason why people here that they would ex-
change the law for a better one.

The law of the country is a law of 1788
each office - this rule of law is because there
is a law of the country & law. The relation of the
law is only given the country & not the competition
is. It is sometimes said that the reason why the law
has not been changed is because each office is
in the hands of the country. - This is a false reason
because it is the ground. - The law has no
interest in the country but the country is not
bound that the law is a law of the country
which may influence the country.

The same rule may be found in the
 book of laws that many being a
 witness - that is - that one witness
 supposed that the rule was coming to pass
 where the husband or the wife was a party
 to the suit or prosecution. The doctrine that
 we now take - that a wife shall in no case
 give evidence tending to criminate her hus-

band - The consequence of this doctrine is that
 where the wife improves the husband as a
 witness reflecting a transaction - & a witness
 wife was also a witness - if she should testify
 & convince of it in a very different way to
 from her husband & one witness was necessary
 to do it - for the wife cannot have the benefit
 of her testimony - but the wife should be heard
 hence the correctness of her husband.

A husband may bring a battery indictment
 of his wife - & a wife may do the same in de-
 fence of her husband. We are not to understand
 that that if the wife of it should be guilty
 of an offence when it is in his own defence
 against a murder - that if the husband would
 be indicted in joining with his wife in beating
 & striking more in the understood by the rule than
 that a husband will be justified in committing
 even a murder killing as the wife would be justified

But the law is not so clear in the nature of a legacy and should not be the death of the donor.

Where a man marries a woman who is an executrix or administratrix it seems to me the law is clear & admitted - and it is well settled in this country - that he is not to be considered in the office of executor - that administration is to be given to his wife in such case and the wife & that without her consent - as the law is well settled by him alone in good - so the law is settled by the court that a man who is a executor for years in right of his wife as executrix - but he is not to be considered as such. If the wife before marriage be a common law executrix - the husband during the continuance of the life - if the executrix were common law after marriage by husband & wife it would be rational to suppose that the husband would be liable after the death of the wife. But we are taught that he is not liable unless he is a common law executrix as before marriage the executrix. When a man is married by his wife as a wife in right of his wife as executrix and the wife dies nothing remains to be done as to the judgment belongs to the administrator of the estate of her husband. The law is not so clear in the nature of a legacy and should not be the death of the donor.

wholly inadvisable. It is stated Private Relations
in the office of the court 29 - that a woman
may be admitted without the consent of the
husband to the estate of her husband 293 that we
will in the husband that she should administer
on her husband. This also stated in English grant,
that a woman cannot administer on her husband
without the husband. It is said that it will be
advised, from the fact that a woman cannot 319
administer on the estate of her husband without
the husband's consent. I receive the
doctrine that she may administer on her husband
will notwithstanding the consent of the husband
to the estate. But we will it will be in the
office of the court that a wife without the husband 27
cannot dispose of the husband's goods nor release 1-4
a bond without payment. This seems possibly 306
indeed that one can release there is a statement
in the office of the court 293 it is said that a woman
that the wife can dispose of the estate after her husband's
administration. It is said that the consent of the husband
is not required for the wife to administer on the estate
of her husband. It is said that the consent of the husband
is not required for the wife to administer on the estate
of her husband.

As to the Only administration of marriage & the age to contract
marriage - will not regulated government re-
quire that the contract be made before a clergyman

However, there was a celebration of the
 marriage - there is not a doubt of law and the
 king's right to marry a married right or a wife
 who is entitled to one of the principles of a wife
 (id) it is not to marry but never do either
 than live together as man & wife - ex quo in right
 to the crown or property of the mother would be
 the death of the child & the mother or any other
 person in the state. - Previous to the reformation
 the custom of arbitrary marriages had fallen
 into the hands of the clergy - and the idea that
 marriage was a sacrament the managing of
 which ecclesiastically belonged to the ecclesiastical
 at the reformation the doctrine that mar-
 riage was a sacrament was considered by
 the reformers as not well founded. But the
 clergy of the church of England continued as
 before & arbitrary marriages still claim they
 could not do it by virtue of their clerical char-
 acter - or the power the bishop & archbishop
 have the sacrament. But being understood
 in the practice sanctioned by constant usage
 it was considered the business of the laity
 that a marriage should be duly celebrated only
 by those who were in an ancient ordinance & thus it
 remained until the celebration of the com-

unenacted in Eng. when an act Private Relations
 of Parliament was made declaring that mar-
 riages should be before a justice of the Peace
 at the restoration of Kingly Government un-
 der the reign of Charles - the Clergy were restored
 & their office of celebrating marriages. By the
 26th of Charles a Stat. was passed regulating this
 subject - in which act it is provided that all
 marriages law contrary to the requirements
 of this Stat. were absolutely void & all intents
 & purposes with some particular exceptions
 In Conn. there is a Stat. regulating marriages &
 by that Stat. marriages are to be celebrated by a
 clergyman in the County in which he is settled
 the laws were interpreted to mean that a minister
 but that any other person a marriage may
 also be celebrated by a justice of the Peace or by
 some other person living - & by some other person
 of the superior court throughout the State - and
 the Stat. directs that the intentions of marriage
 shall be published & consent of parents and be-
 fore any person shall celebrate - including a
 demand on those who disobey this regulation
 a question has arisen respecting which there
 seems to be much difference of opinion whether
 a marriage celebrated by a person not qualified
 by Stat. is void & the issue of such marriage be

I am not contented that the
 person so celebrating is liable to a punishment
 sent to the Legislature to the State. (is it a
 clergyman should celebrate a marriage in
 a different County than that in which he
 is settled he would be liable to a punishment
 but would it be wise? I would remark
 on the hope that being a clergyman gives
 him no authority in a County where he is
 not settled minister - he has no better right
 I mean there than a constable or any other
 man. There can be no doubt that the ex
 ecutive of the State of Geo. has rendered
 these marriages not celebrable as that of the di
 oct voice - but I apprehend that by the pro
 vision of the law - marriages although cele
 brated by a person not qualified by law or in
 a manner forbidden by law are valid - the
 particular conduct of the parties concerned
 has rendered these objections to the validity
 of the law - but such irregular conduct is not
 a ground for impeaching the validity of the mar
 riage. Until the next year during the reign
 of East nothing can be done on that subject
 but I will state that I have not yet been in
 force that any person but one in holy orders
 could celebrate a marriage. I am more of a

[illegible]

Baron & Gore - due to be before marriage - If the man
 & wife had been a nullity the law would not have
 induced - that the pretended husband should have
 joined in a suit with his pretended wife as her
 husband. He stood in bond by husband & wife given
 to the wife when sole - the debt pleaded that there
 was no legal marriage - but it appeared in evidence
 475 that there had been a marriage. The law was
 according to law - it was holden that the plaintiff should
 476 recover. The same law was recognized in an
 action of Battery by Husband & wife for the battery
 of the wife - so also an action of trespass was
 maintained for taking away such a wife.

We find also that a marriage by a Popish Priest
 was held valid & that in the strongest possible
 case - The case was that a man had been mar-
 ried by a popish Priest who by law had no au-
 thority to marry - This person so married die-
 ring the life of his wife married again. This
 matter was brought before the ecclesiastical court
 & the second marriage was dissolved when
 the principle that the first marriage was va-
 lid. After the marriage was annulled he was
 prosecuted before the Com. Law Court of Criminal
 478 jurisdiction for Bigamy & convicted. This says
 479 Judge Keble seems to me very fragibly proved that
 the Com. Law did not consider a marriage celebrated

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irregular & wild & society it Private Relations
would be very in a way not so often extremely
unlike those in a more civilized society to treat men & women
as well in a country like ours where
many marriages are celebrated in a manner
different from the mode prescribed by law. &
this is not done from a rebellious spirit in op-
position to the law - but a wise & from conscientious
scruples & reasons indeed but honest.

There used to be says Judge Keene in a near vicinity
for some years ago a religious sect of people - not
of fanatics - who chose rather to be governed by
their ^{own} law - such as the dictates of their own con-
science should approve - than by any law pre-
scribed by legislative authority. Regardless of our
laws relating to marriage they took to themselves
wives without the authority prescribed by statute
tho they were aware that they subjected themselves
& families - Indeed they would be prosecuted
so that they might ^{have} suffered for conscience sake
but few or none of them were ever prosecuted -
they were let alone. - One day as Governor Abbott
was sitting by his fire-side with a pipe in his mouth
one of these men came in & stood some time with a
reverent salute - and then said to the Governor saying
I had just married the woman at the top of the hill, please
if your magistracy or priests - the Governor then said

Parents & Friends - I am sure you will be very
 & a friend of mine - I am sure you will be very
 take that woman to your wife & she will be a
 you Madam have you taken this man for your husband?
 said the woman Well said the stranger I then in our
 thirty of the State of Conn. declare you to be ^{husband} wife - You
 are now a stranger & after a while - replied the
 woman There art a cunning creature

I discovered nothing & I judge there is one Stat.
 similar to the declaration of the Stat of Great
 that marriage which are unduly celebrated shall
 be void to all intents & purposes - & altho it is stren-
 uously urged that it is a marriage in fact in an other
 manner than that prescribed by the Stat. it is void
 yet I never heard it urged that it is a marriage in
 fact altho there was no publication & consent
 of Parents that this marriage was void & yet the
 Stat. expressly forbids the clergyman & magistrate
 to celebrate a marriage - unless a publication & con-
 sent be made & consent of Parents given if the pro-
 hibition in the one case renders the marriage void
 why not in the other case? For the Clergyman &
 magistrate are as much prohibited to marry
 where there is no publication & consent of Parents
 as other - are who are not Clergymen or magistrates
 in any case. - I know it has been said that in the
 one case there is a penalty & in the other none.

& in our private law, the Private Relations
 receiving more than one - surely men
 should not even require the offence com-
 mitted unless we suppose that the object of
 the stat. was to give the clergyman the alter-
 native - that he might marry without pub-
 lic consent or consent provided he would pay
 the penalty. - That was not the design of the
 design of the stat. - The married relation
 was to prevent the offence & in case it was com-
 mitted, to punish it. But supposing the pen-
 alty of the offence could require the mar-
 riage where there is no public consent or consent
 of a clergyman, then the idea is it is wrong would
 be to create a marriage by a person not qualified
 to do so - so that there is a necessity of looking on
 the stat. & the breach of that law as a public - not to
 disobey the voluntary prohibition of a stat. and
 to do that is not the stat. which it is a marriage man
 and a woman living as such by the civil law.

The law which allows one to contract mar-
 riage is in some countries in females twelve
 whereas in others it is at any age - but the
 validity of the marriage depends upon the parties
 being of age & in some cases of 21 in females & of 22
 in males - as in the case of the marriage of the Holland
 which was not in spirit with one party so it does not

As with some with the other - at a of greater age
 with all the male is a state of the female alone.
 as the law is right & all agree to the marriage
 - both at 12 or 14 be have the same privilege at 16
 as at 18 that is a question.

if a girl cannot be endowed until she is 16 or 18
 years of age - & the reason given why she can
 be endowed at that tender age is a very in-
 proper one - & the case of a minor which is
 now under the age of 14 - should have no effect
 it will be a hardship. I have never heard in the
 state why the judge of any marriage is not the
 person married has not arrived at the age
 of discretion & I think it would be that such pre-
 mature marriages would never become any
 matter, even on court - And a contract I
 suppose is void also the principle that is
 a contract against public policy and when
 that is so

as to lawful & unlawful marriages - I am of the
 opinion we are to have no more intermar-
 ry - that is to say that a marriage
 between a white & a black person is a marriage
 without the sanction of the law of England. But
 that is not a question - that a marriage
 between the parties who are so much united as
 to be within the law of the law of England is

not a valid marriage - ¹²¹Private Relations
are not regulated by the law of God
are invalid - the law of marriage is entirely
founded on the law of man - so that it is only
in the administration of the law - that we can
know what marriage is & considered as
valid by the law of God. But in that case
aided - the court of law have determined
that the marriages forbidden by that statute
are the following - 1st a second marriage
where there has been a prior marriage & an-
other person who is living - 2^d where there
has been a prior contract & 3^d where there is
impediment - whenever a marriage is invalid
for any of the causes mentioned there
are considered as husband & wife still divorced
except in the case of second marriage - where
there has been a prior marriage & another per-
son who is then alive. In this case the second
marriage is considered as absolute void &
there is no possibility of a divorce & the parties
are not considered as husband & wife de facto
relations but by affinity is as much considered
within the criminal degree as by consanguinity.
From a great number of cases it has been
determined that the relation was not within the
criminal degree & also that it was not incest - it may

Baron & Anne being in the first degree - the marriage being in the second degree - that in the collateral line computing by the civil law the prohibition does not extend below of the third degree & below. This computation is made by beginning with one of the parties & counting up in the ascending line - one for each ancestor until you come to the common ancestor of both parties then counting down - one for each ancestor of the other party until you reach the party. And if it is so that the number of degrees exceed three - the parties may marry as not being within the prohibited degrees. Thus John Hill married Anna - the daughter of his brother Thomas - is the marriage valid? Try it by the rule laid down - From John to his father Henry is one degree - Henry is the common ancestor of John & Anna - from the father of John & Anna down to Anna - count down Thomas - from Henry to Thomas the father of Anna which is two degrees & from Thomas to Anna which is 3 degrees - of course the marriage is in valid - the parties being in the third degree. Again suppose Edward Hill married Polly Hill - children were the son of John Hill - Polly was the daughter of Thomas - the father of Edward - from

degrees of them is one - from father. Private Relations
 A father is two - the son of the son, is a son of
 a son of a son, is a son of a son, is a son of a son, is
 a son of a son of a son of a son - which is three - from
 father. A father is four - the marriage is a son
 of the relation which is in the son of a son of a son
 the husband is related to all the blood re-
 lations of the wife - & so the wife is a son of the
 husband - but the blood relations of the husband
 are not related to the blood relations
 of the wife - so that John & Jane may marry
 or rather Peter & Mary have two sisters - or if John
 & Mary marry John & Mary - & John & Mary should
 marry Thomas & Jane & John & Mary should marry
 John & Mary might intermarry

It has been determined that a marriage with
 an illegitimate relation in the same degree, com. a.
 is incestuous - that is, a person is not to be married to a
 person who is his son - which recognizes no relation
 but that the illegitimate child is a son of a person
 but this is a mistake

To a person who has been there for a contract
 is not now considered as rendering a marriage
 void. In case of inability it must be such as at-
 tached to the party previous to marriage - & render it
 invalid - & not that which by accident - misfor-
 tune or otherwise arises afterwards

Barren & some - such marriages may be dissolved
 by a sentence of Divorc in the spiritual court
 shall be the divorce in these cases is vincula matrimonii
 500 by which the issue are fastened - also the
 501 wife is considered as a wife until
 502 there is a sentence of divorce - but the divorce
 503 shall proceed when the husband and the marriage
 504 is void absolutely & when sentence is rendered
 505 the marriage is considered as void & in fact
 506 but if the husband or wife had died before
 507 shall sentence of divorce - the marriage would not
 508 have been impeached. It will be remembered
 that whenever a divorce is vincula matrimonii
 in some cause which existed prior to the mar-
 riage.

The spiritual court have power also to divorce
 for ~~such~~ causes super venient to the marriage
 & the divorce in such cases is only a mensa
 & thoro - this operates to separate husband &
 wife - but does not dissolve the marriage
 bond. And the parties after such divorce remain
 509 the same whilst both parties are living. & neither
 510 does it deprive the husband of any marital right
 511 as it respects her property - he is entitled to the
 512 same as if her real property - and if a husband
 513 is deprived of her it belongs to him. This true
 514 however that when a husband has attempted

[illegible]

affairs & the term inactivity - Private Relations
In the literature meant to cover the same
idea & the term which the author is in
mind. I have not seen the subject of a contract
in national literature & it is somewhat in fact
the - that contract which is not a simple contract
but should be treated as a contract - which
is involved in practice - I think should
be treated the same as the contract that can be con-
sidered - it is not impossible when obtained
by means of a contract - it may be the
contract should get into his possession the property
of his neighbor by a contract that is not ob-
tained - it not only renders the contract void
in many instances it is a crime. The author
seems to have found some results at the time that
when a man by the same admirable means ob-
tained the same & an admirable manner as a
man of great - that the law should protect such
contract & give it the same force as if it
obtained. The truth is - a contract which is ob-
tained by force it is in fact a crime as a contract
for which the contract is not a crime as a contract
since a contract there might have been a
marriage entered into with a contract as a
marriage entered into. There is no reason
in the law of a marriage entered into

Barry & Fome - Then one procured by force and violence - the contract is as totally void in the view of the law in the former as in the latter case. The true point of light in which this ought to be viewed & apprehended is that the marriage is void ab initio - but it is necessary to have a decree by the court - since the marriage has been celebrated - that all concerned may be apprised that such marriage has no effect - when the same principle that chancery decrees contracts unceremoniously obtained void. with the apprehension that is created in the minds of conscientious men - of the illegality of separating husband & wife are diffused if the view is correct - for they were once husband & wife - one essential ingredient to the contract is wanting - viz. consent.

Whether a marriage was solemnized which violence was obtained by church of the same was void 95-4 or not has been the subject of very different & authoritative opinions. It is difficult to conceive why a contract so solemnized & the more important that can be entered into should be void when obtained by church - when all other contracts obtained by church are void. The authorities tell us also that a marriage by an Israelite is valid and a sign as a reason why it should be so that

an Elect can consent to man. Private Relations
may - He is bound by all other contracts and
but why is he not bound by all other contracts
to which he consents. His understanding is
that that he ought not be bound by his con-
tract unless he is bound by his
contract of marriage. --- In the case of
adultery it may be proper to remark that it is the
adultery known to the law as understood
in the spiritual courts in Eng. which sometimes
cause for a divorce which is where a married
person has illicit commerce with any person
it is not material whether the person with
whom the offence is committed is single or
married - which is a more extensive offence
than adultery punished by our Statute (some-
times called Connecticut Adultery) which does
not punish the offence of illicit commerce as
adultery unless committed by or with a
married woman. When a divorce takes place
for this offence - the wife is in the debt of
the husband entitled to her dower if her husband
be not the guilty party. And the divorce
is a vinculo matrimonii the issue are not bastards.
In Eng. it has been holden that in case of a divorce
a vinculo matrimonii which however upon the ground
that there never had been a marriage if the husband

Baron & Lem - was indeed the wife & her name
 Lettice - after the divorce he is still settler and
 got all the property which he received with her
 and belongs to the wife - yet if this property has
 been by the husband conveyed some time to
 others - the rights of such third persons are
 not affected.

In the case of three years wilful absence con-
 sider one law - it has been held that if a husband
 turns his wife out of doors & so abuses her that
 she cannot live with him safely & she departs
 from him - that this is not a wilful absence
 on her part - but that it is so on his. In all two
 cases in which the wife may desert cause di-
 vorce - the divorce is *vinculo matrimonii* and
 in none of them is the issue *bona fidei*. The
 Court when they divorce on account of the
 fault of the husband hath power to assign to
 the wife some part of the husband's estate not
 exceeding one third whether it is real or per-
 sonal property. This is done when personal
 property is assigned by making out a schedule
 of the property specifically & the Court decrees
 that such particular articles shall belong to
 the wife - & this decree vests in the wife an in-
 defeasible property in such articles. If the hus-
 band's estate is in mortgage so that there can be no

specific assignment - the court Private Relations
ascertain the amount of property in the best
manner they can & then decree that the hus-
band pay the wife such a sum & on failure
lay him under a penalty - which penalty
will be recovered in the civil law courts and
is not liable to be repealed by any decree in Chan-
cery. If sufficient personal property not to
be found - the court assign some particular
piece or pieces of real property belonging to
the husband by meter & bounds which as-
signment vests a fee simple of such lands
in the wife which no way affects the right
of dower in the innocent wife. In the case
of adultery the first is given to her for her main-
tenance during the life of her husband - & the
latter is expressly allowed to her by Stat.
Marriages within the Levitical degrees are
prohibited by our law & rendered absolutely void
The issue of such marriages are illegitimate
without the intervention of a divorce. & di-
vorce is never had in such a case. - The Stat.
having in express terms rendered it impos-
sible that persons related within the Levit-
ical degrees should intermarry - There is one
exception made by the Stat. The husband may
marry the sister of his deceased wife.

Having done - whenever any other case for a di-
 vorce than those before mentioned exists
 application is to be made to the Legislature &
 it is an uncommon thing to divorce for cru-
 elty - & a well grounded fear of life limb or
 some great bodily hurt. The Legislature
 divorce a vinculo matrimonii & a married woman
 they judge most proper - They also when they
 deem it proper allow the wife alimony.

Le Roland compared to him —

Le Roland had in a District of the continental interior
who was said never to have changed his sentiment as
his dress. And he gave great offence by appearing at
the French Court without being so dressed as usual.
The styled form. as he was accustomed to receive
thither clothed in a plain black suit with his
straight white cravat worn over his shoulders & his
sleeves fastened with string instead of buckles.

Le Roland compared to him — Stephens French Revolution Vol. CXVI

23

[illegible]

Master & Servant - upon the subject of the right of personal security - personal property & private contracts as they are in England. The local laws of other countries can not be introduced in Eng.

There did indeed formerly exist in Eng. a species of slavery called villeinage. This however was not absolute slavery. The word Thain was used as synonymous with slave & as the word Thain in the time of Henry the 2nd. Thain & Thainish were synonymous with servant or slave - not being used as in modern language are appropriate terms. Formerly the villeinage however was admitted as to the natives about the 12th century & then it was 14-6 there were but two villeins in the whole Kingdom & there and it seems that in the reign of Henry 3rd. 507 a person in the character of villein was hardly known. But there is now no slavery or villeinage in England.

But has slavery been legislation in our country by one law? I understand that the great matter has been - I am aware however that Mr. Pitt has a different opinion. He is so much attached to the doctrine of the ground of natural rights that he is unwilling to acknowledge that ever law was intended to show that slavery is a crime.

10
that it is the business of the State to regulate the
commerce in goods and services and that the
may regulate the same or grant the same a great
measure of statutory control as respects the
trade of slaves - & more probably the slavery in
the State - that is in general. We have that - that
regarding the rights of the master over his slave in
- limiting the master's authority. & taking 228
some steps to protect his slave in certain 55
cases after emancipation - & providing 226
slaves - & making certain things - & making 320
them in certain cases in a particular manner
& particularly a - that providing for the gradual
of emancipation of slaves. There are not many
I decide the question. But I believe in the
decision that there would not be any slaves
that the law provided that there was a total
emancipation of slaves by the State - which was
to be done with no great delay by the State
and the State with notice for having a notice of sale
was a notice of a remedy - and that was 226
the case. It will not be a total emancipation
the State that State absolute slavery ever
existed in the State - as in any other State
in the world. The State is in the position of
making no other notice - & in the State as in
the case of the State. The State is a State that

[illegible]

with the principle that a slave & Private Property
should be emancipated upon marriage with
consent of the parties. It is true a child is a slave
& a child could not be emancipated by 95-4
marriage a villain - but it is the same with
that if a child marries a woman with consent 127
it was emancipated & so it is the same with
if the slave married a villain with consent &
it is a fact that we have slaves in the state
& that children born of slaves are slaves the
question was asked whether an illegitimate
child can be a slave by birth - To depend upon
of our usage & the law I suppose such
a child could not be a slave. This precise
question could never have arisen at the law
because in this there is no slavery. But usage
has always been in conformity to the law & has
not the power of the law but it was a matter
of the law & the custom - but in this the
question is the same & so the question of
the child is the same that of the father & mother as
the mother. The question always was in deter-
mining who is a villain - whether his father is
a villain or woman. But now it is determined & it is
in this law & usage - it is sufficient to say & the
law does not require any such relation as the
one child when the child is illegitimate

Article 1, paragraph 1, of the constitution of the
 State of Georgia, which is the only one in
 the world, provides that a relation
 shall be made between the illegitimate child of a
 father and the mother of a child born in the
 same State as the father. Every one
 who has observed the law has been almost con-
 stantly observed in its execution, and that
 the law has been long ago established in the
 State of Georgia. By a subsequent act, it was
 provided that all slave boys after the year
 1784 should be sold in some place no longer
 than till they arrived at the age of 25 years.
 It is also stated that the law was not
 enacted in 1787 - that the law was enacted at
 the same time.

Offenders against the law are liable to be
 imprisoned, and the law is enforced in every
 instance. In some cases, the law is enforced in
 the State of Georgia - In some cases, the law
 is enforced in the State of Georgia - In some
 cases, the law is enforced in the State of Georgia.
 In some cases, the law is enforced in the State of Georgia.
 In some cases, the law is enforced in the State of Georgia.
 In some cases, the law is enforced in the State of Georgia.
 In some cases, the law is enforced in the State of Georgia.

540 The other kind of removal may be retained
 by local contract. it is by agreement
 by the children of all two persons may be
 applied out by the overseers with the
 same notice till 21 years of age.
 10, poor persons may be removed to any
 place in the parish or out of the parish
 when the public or a great number of persons are
 small property sometimes is exhausted, &c.
 In some laws provide that the persons order
 542 to whom such poor persons are applied
 as apprentices shall receive them if they
 are compellable to receive them under a
 penalty in case of refusal. In some we have
 a stat. somewhat similar - except that no
 one is compellable to take such apprentice

[illegible][illegible]

Master & Apprentice it is said in the book that
 the apprentice does not receive wages - but
 not meant that he cannot receive wages in
 8th special contract - The fact is that some
 57 of course & some right receive wages but
 10th The master stipulates to pay wages as in book
 452 & say. The stat. 5 Eliz. provides that master
 must pay himself by their own contract
 497 of apprenticeship - but according to the com-
 500 mon law doctrine that when that stat. They are not
 700 liable upon their covenant - The policy of the
 31st of the stat. is to make him liable as long as the
 100 relation of master & servant continues de facto - for
 501-508 so long the parties are subject to the statute & en-
 509-518 joy the rights of that relation - & it is deemed
 519 the full time is to fully bind - The master
 716 his father & his wife with him in the indenture
 The rule therefore as to minor servants liability
 in his covenant remains the same as at common law
 But if the father or guardian joins with the minor
 in the indenture - such father or guardian is bound
 by the covenant that the minor shall serve as an
 apprentice. But the apprentice himself is not
 liable. We have no such stat. as that of the 5 Eliz.
 and if that introduced a new rule it is not
 law here - but if it is in affirmance of the common law
 say the Court I am inclined to think it is - the

it is not so agreed in law it may Private Religion²⁶¹
be viewed as law here. The master is bound to
supply & provide necessities for his apprentice
unless otherwise agreed - & being in loco parentis
he is bound to protect him - Hence a promise with
so called in good cause - the apprentice & Sec 518
the service of his master. These he must have
whether he is a slave or not - unless he
is a slave, not a slave then. A promise is a good
pledge in law if the servant is sued - & a good cause
a defence as the master is on the covenant.
It is often said down in the books that an appren-
tice cannot be discharged otherwise than by deed
This rule however requires qualification. It is true but
that he cannot be discharged by contract cap 117
except by deed - but in the case of personal estate both
the servant is discharged - & the too without deed 68
the master however is still liable on the covenant. 3. 110.
The meaning of the rule is that the servant can- 181
not be discharged by agreement any other way
than by deed. - for the maxim of the law is co ligam-
ine - quo ligatur. But the contract may be destroyed
- the apprentice discharged otherwise than by the
deed - the indenture may be cancelled by both 581
parties - or one may deliver up his indenture to the other
other & it destroys the contract on his part. and
it was decided in the case of Seymour & Manville that

Master & Servant. The master after having turned
 away the servant without the consent of the
 Dr. father could not recover him nor recover at
 all on the covenant. It was a discharge of the ser-
 vant - yet no doubt but that the servant had
 been recovered on the covenant, in the master's
 hands, if a breach of covenant, there would
 be a discharge of the servant, as well as a
 discharge - into. He has a Statute enabling
 the court of com. Pleas in case of any breach
 of the covenant of the master - I did
 charge the servant. In case of breach of the
 covenant - to pay the sum of 100 shillings, if the
 master is evicted in the court - & in case of
 breach of the covenant. If the master is evicted
 & some in which apprentice, master & wife
 shall be paid - viz by complaint to the court - or
 by the justice - or by the justice with appeal
 & appeal to the court - or by the justice
 in case the case of apprentice, or
 if it is a case of that.

It is a well established rule of com. Pleas that
 a master cannot sign. He who has an
 apprentice may in general dispose of it - but a
 master cannot dispose of the interest which is
 in his apprentice - & the reason is because the
 contract is personal - and it cannot be
 assigned.

[illegible]

Master & Apprentice - If the master is bound to the
 the master is bound to the apprentice - but the
 found that the master is bound to the apprentice
 to the purpose of improving in his trade
 or profession or trade - which the terms of the
 agreement in the indenture allowed it or
 that the nature of the employment requires it.

134. It is expected that the master is bound to the apprentice
 135. only to going abroad - this is the nature of the
 136. employment. But where a master is bound to the
 137. apprentice because the advantage were
 138. thought to be better than the master would
 139. be liable in the contract - the nature of the
 140. business did not require it - nor did the in-
 141. denture allow it.

142. The nature of the master's obligation is to the apprentice
 143. and the apprentice is bound to the master
 144. and the master is bound to the apprentice
 145. but it has been once held that the apprentice
 146. is bound to the master in the contract of the
 147. indenture & is bound to the master in the
 148. contract of the indenture & is bound to the master
 149. in the contract of the indenture & is bound to the master
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whether the executor of the master is bound to the
 apprentice & is a question not yet decided.

220
According to the records in - *Pringle's Relations*
the master says the girl - after the death of the
master is executed in bond & according to the
law dies & other necessary services according to the
law of the master. But not I think him
in the same sense as a slave. - The master's
seems to be a legal rule & perhaps not created
on principle. The consideration which pro-
vokes the master to make the contract, even
with him with respect to - was undoubtedly
the service of the apprentice - but as has been
before said the executor cannot bind the ser-
vant nor the law any legal obligation - the
continuity of the contract then is destroyed if
he cannot bind his recipient - The consideration
then for these mechanic rules of law, I suppose
says the ground of the rule is that
the covenants are independent of each other.
The master does not expressly covenant & can not
bind his partner in consideration of service. It
is not the apprentice covenant & is not in law
consideration & necessary - The court says the
fact that these covenants are independent & that
the performance by one party need not be a con-
sideration in relation to the other. The master's
is not a covenant as the other is not. The master's
is more a warranted statement of fact than a covenant.

Master & Servant - It makes no difference as to the
 duties of the executor whether he be alone or
 mentioned in the indenture or not - his duties
 are the same.

A premium is often given to the executor be-
 sides the services of the executor. If the pre-
 mium is given the term expires it is clear
 that the executor ought to receive a part of the
 premium - as I wish to mention - there may
 be a restriction in the case however is in fact a sub-
 ject of legal jurisdiction. Courts of law
 will not make a restriction unless provision
 is made for it in the indenture. There may
 also be a restriction where the executor is an
 attorney - the restriction is not binding too
 far - the court will not enforce it. It is
 clear that the parties in the indenture have
 agreed upon a restriction in case of the death
 of the executor - and such a time - that the executor
 shall receive a restriction of more than will
 be a restriction in the law. And the restriction
 is the same as a restriction of the executor
 the executor returns - the executor may be
 liable to receive a restriction of more than
 the law. It has been held that the executor
 shall receive a restriction of more than
 the law. It has been held that the executor
 shall receive a restriction of more than
 the law.

[illegible]

Master & servant are in the same relation
 regulation applicable to the same & even
 By one & there that it is provided that all
 persons having no visible effect may be con-
 sidered as such & not as such as shall be used
 by the master or servant & including himself
 in such as either give or exact more wages than
 are settled. These statute regulations however
 are of no validity in the country.

Mr. Jacobs there are no persons as Factors neither
 150 Clerk Stewards Attorneys Shipmasters &c. &c. &c.
 160 however are not relevant in the same sense
 170 in the proceedings are. They are relevant as
 180 by in such act as affect the property of the
 190 Master. They are not subject to the power of
 200 control of the master. Indeed the ^{Embargo} ~~master~~ ^{Embargo} ~~master~~
 210 the same of persons has a not master. It is the
 220 demand is made at the master's expense
 230 as to the master & duties of these children & kind
 240 of descent - it is difficult to lay down any
 250 general rule applicable to the same. It may be
 260 or be laid down as a general rule that the master
 270 not for the purchase or sale of goods according
 280 to their contract. & the relation is a contract
 290 to be exact or complete. For more details visit
 300 arise only the nature of the employment &
 which the parties are presumed to have agreed

[illegible]

Master & Agent - when goods are in the
 possession of a constructive holder, it is a
 more right of possession created by the
 law, than one that is in fact. In the
 case of Bartholomew - the factor of B can
 not hold them as agent of the principal or better
 factor - for the former was countermanded in
 1844. while in the possession of the latter may re-
 cover them in trover as being constructive in
 the possession. But while the goods remain in the
 possession of B - the factor has no lien & cannot re-
 turn them in recovery there as agent of the principal. He
 did not become a pledge in the hands of the factor
 till he had acted as factor. -
 Where the authority given to an agent is in-
 terminable & it appears that the agent has acted rea-
 sonably he will not be liable for conversion. -
 if the factor gives a note nothing more is requi-
 red than the receipt of the principal. But if the instructions are explicit & he re-
 fuses - as if such a quantity of goods were ordered
 & at such a price & the factor give a higher price
 & buy a less quantity - the principal may re-
 cover the purchase & then the goods from the
 factor. & if the price at which goods are sold or
 if such in the instructions & the factor sell at
 the low price & buy a less quantity - the principal

[illegible]

[illegible]

Concession & attorney - attorney Private business
 have a lien on their clients fees - But some of the
 others will not honor their clients fees. But in
 an attorney holds his lien subject to any & 122-27
 statute claiming the adverse party. - Then 55
 or recover on & on - the attorney or or has tax & 200
 will be paid as usual - but must be to be 55
 him the amount of his clients fees. - But suppose, that
 the who recover is liable to & to have a claim of 464
 cost & the same amount of it is a former suit & 56
 here the same will be set - at least the parties 124
 will be entitled to a refund & therefore the attorney 67
 lien is not valid 56-456

an attorney who executes an instrument for his 855-7-3
 principal should do it in the name of the principal & 60
 and not in his own name. If he executes it in his own
 own name he binds himself - & not his principal - as 12
 if one have a power of attorney & execute a deed in his
 own name & name of his principal. The signature should be 177
 be true, & by C.D. his Attorney (or C.D. for A.B. which latter
 parties are occasionally 24-25-56-75-etc, 405-955-etc. &
 so again it is not enough to be his principal - but
 by any deed executed in his name - unless his authority
 is valid & clear. I do not know any of the former
 & understand the reason for this. The deed
 may be null, and the principal is not bound
 in such a case as a matter of course.

Martin's errand - That he may find his principal
 - L.B. is a parole promise. - Suppose the agent sells
 200-0 a horse - which he may do by virtue of a verbal
 L.B. authority - & makes out a check of sale which
 S.S. is unnecessary - will not this find the principal
 bound. If the rule be construed strictly it cannot. - Here
 the attorney is not to be considered with another rule
 L.B. & that is - If it is the presence or to be directed by
 & to sign such an instrument with his name & to
 sign it in his presence - & it should be it - & does

in Crim. law is the case sign it as attorney - the instrument
 is not import a signing by attorney - it is the
 same as if I signed it himself. The principal
 sometimes makes a name - & his name is altered
 to it by a notice. But none of what we is the name is till
 written to write his name

121. etc. agent in the public acting in a public or pri-
 172 rate capacities - but contracting in the name of
 174 not liable personally on such contract. The it can
 181 call of the Exchequer in Eng. is never liable non-
 182 liability for any transaction ~~with~~ the public ~~and~~ The
 183 are in matters of a colony - the Admiral & a few
 80 he are not liable personally for provisions nor
 184 cases, & not a very small. This point has been
 Branch decided in the United States - in a case of Dec 18
 456 - & the decision is in favor of the Admiralty &
 185 & the Admiralty & the War in the time of

[illegible]

Master's consent. Assignment in service may
 be made in the very unusual. I have not
 usually considered themselves as every apparent
 cause for respect as abridgement - they take into
 consideration the age of the debtor - his state
 of life - his domestic relations - his character
 reputation & influence among his neighbors &
 among the numerous applications made to
 within my knowledge I recollect only one in-
 stance where the application was effectual:
 where the debtor is much indebted & others an
 assignment in service may suppose or be an
 satisfaction for their debts & therefore there is
 a reasonable cause for refusing a judgment.
 But when an assignment is made it can no
 longer be made to a man & his heirs. Because
 the authority of the master & his heirs is as-
 signed - is personal & is confined to his person & can
 not be assigned. And for the same reason he cannot
 be assigned to one & his executors administrators
 or assigns. Thus far as to the several clauses of
 service under the 2nd law of the state - & the ser-
 vices applicable to each class of cases. I
 think there are rules applicable to masters & servants
 generally. &

— Where the master is bound to his servants by the act of
 his servant & where he can take advantage of his act.

[illegible]

[illegible]

all could be done in all Private Relations
and in the case of Hocking & Coe
which is an open question - or rather not so. It
must be proved to be so. But the true rule
around here is that of his right & action. It is
in that case, property - of value of the instrument sold
in the case of all ~~the~~ persons who are except 280
the master is a trustee. - it has for its purpose - and
has such a qualification property against all. But
it is that he was a trustee when the property
was taken away. But when the master is a trustee
and at the time of the taking - the goods are 1200
around the in the possession of the master. On
this case it is a trustee. - there is no
in a trustee and can have no action on them. Hocking &
but a recovery of the thousand by the master. But
has the servant's action - a recovery by the
servant from the master - & a more common
part of the action by one may be divided in later
cases into 3 an action by the other. And if
the same rule applies in case of goods taken by a
more narrow law. When the servant in such
case brings an action he declares on a promise
made by himself - and his own goods - provided 285
the master would if he would see. This is a
rule of his own - but nothing further is
said in the case of the servant's action.

[illegible]

[illegible]

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The acts of the servant in such case (Private Motion)
are not the acts of the master & hence the
master is not liable. Thus if the servant while
leaving his work in the field - goes & beats an ass
other - the servant & not the master is liable 1 Bl. C
for the battery. It was done by no express command
nor as the case supposed - it was done by 8 Bl. C
as a matter of course because it was not
done in discharge of the master's business any other
more than if he had hired a smith to shoe a horse
as it is if the servant without express authority
enters into a contract not in discharge of the
of his master's business - but if in such case
the master allows or acquiesces in the contract
it is binding upon him - & there is no exception
to the general rule because it is now the master's
contractual contract. It has been recently decided (see
decided in Dy. that if the servant while acting
fully in the performance of his master's business
does some act which causes a wrongful injury upon another
the master is not liable. The case was that the
servant negligently drove his master's carriage
against that of another - the action was brought
against the master & it was held not to lie. And perhaps
the reason why the master is not liable is that
the act done is not in performance of his master's
business - but it is. When this case was

Master Nelson in the present negligent driving
 into the water, and as a matter of fact the
 court or will hold rightly too that there was
 the proper action & not trespass or a crime.
 It was in the case that the court thought out
 the right which by a subsequent decision in
 the case of *Yates v. Jones* has become a settled principle
 of law. - This was an action of trespass & vicar-
 ious liability for the servant's negligent driv-
 ing of a carriage against a pedestrian. The court
 held that no action at all would lie in the case
 as the master - and did say that there were no
 restrictive words in the case as a reason
 for not supporting the action in the case.
 It is a little remarkable that the court said that
 these decisions are all correct. The first
 & third cases no action at all would lie as
 the master because the act was done by the
 servant negligently. In the second case the mas-
 ter was liable but the servant's action was not
 sustained in the case - it should have been tried
 on the case. In the first case the decision
 was right but the reasons applied were wrong.
 In the two last cases the reasons were right
 and the decisions were right. Where the mas-
 ter is liable for a wrongful injury committed by
 his servant & not by himself, the servant's liability

when he is liable in the respect Private Relations
of the service - in a will be covered by the
provision - and in another case can the man
be liable for a breach of the peace - or the
master is liable in either case by imputation
or direct action - but he cannot be subjected
to imputation to legal imputation - The elec-
tion of legal imputation does not extend so
far as to make the master liable criminally
for the manner in which he is convicted guilty. But
if the master is liable in tort for a liable
guilt for a breach of the peace - but
he is not liable criminally as has been pre-
ceded to show that he is not liable in tort for
the act of his servant if it is not done by
the command of the master or the act of a
servant. If the servant of a employer another
servant of the same employer - which inter-
ference by his representative requires a stranger
is the original master is liable - as well as the
servant who does the injury - The case was 150 & 9
or more employed of a man in his - it employed 200
to 300 persons & a employed 200 was in 5. The
he injured the wife of another - The action was 411
brought up the matter was sustained. I should
say the Court whether the imputation of the case
is applicable. I think that the case is 150 & 9

Master & servant it was the first in which the prin-
ciple was advanced. I do not tell others
what they should do but that it is not improper
to do it the principle. ~~And even then~~
~~is no action~~ will be at the intermediate

2dly. servant - not in who actually employed the
servant. But say the C. is the servant who
is employed in a house in a second person
it will follow that the intermediate person
who employed the servant is liable.

It has been already observed that the master
is not liable for the wilful torts of his ser-
vant. I apprehend however, say the Court that
the rule applies to those cases where there
is no privity of contract between the master
& the party injured - (i.e.) where the master is
not a party to the contract - a stranger to the party in-
jured. I find no case of the kind coming
before the Court will support the rule - and in

a Blacksmith's servant - in shooting a horse
whilst he was at work - the Blacksmith is li-
able on the ground of the implied contract
with him, ^{that} the horse should be done with
skill - & prudence. So it is with a Tutor in a
school - as a master with his servant it is a vi-
olation of the contract implied in the employment
that he will - & therefore the master is liable.

the subject of the contract is to be in
 an interest - it is to be in the interest of the
 law, then in the subject - it is to be in the interest of the
 181. The subject - the subject of the contract is to be in the
 182. The subject - the subject of the contract is to be in the
 183. The subject - the subject of the contract is to be in the
 184. The subject - the subject of the contract is to be in the
 185. The subject - the subject of the contract is to be in the

186. The subject - the subject of the contract is to be in the
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 198. The subject - the subject of the contract is to be in the
 199. The subject - the subject of the contract is to be in the
 200. The subject - the subject of the contract is to be in the

as in one another another to him Private Relations
him a time or a term or to sell one. it is ac-
cused authority to contract requires no deli-
viation - it is merely an authority expressly
given. it is great authority, may be implied from
the master's general usual employment, practice
as where one employs a steward to manage re-
sidence - it is implied from the master's
will that he is necessary to procure a particular ser-
vice to him, or to be delegated to the steward
to be the authority in person or implied from his
practice & authority upon the credit of the master
or social authority may also be implied - to a slave
having taken in service - then a servant is
under a contract in the presence of his master & the
master, or the master & the master knowing it
does not protest - his silence & acquiescence are
construed into an implied authority to make
such a contract - the maxim is qui non protest
non prohibet potest ubi.

the master is bound to his master always & to
himself to provide a necessary with money to
him to travel & to him to support him & to trade in any
other way - the master is not bound to answer for what
he promises in the contract upon the credit of the
master & the master's credit were similar - because it shows
the same & it is not his to be a part of taking up, good or bad.

1. Master & co. v. B. & C. The master is liable for the goods
 2. The goods are not in the possession of the master. The
 3. The goods are not in the possession of the master. The
 4. The goods are not in the possession of the master. The
 5. The goods are not in the possession of the master. The
 6. The goods are not in the possession of the master. The
 7. The goods are not in the possession of the master. The
 8. The goods are not in the possession of the master. The
 9. The goods are not in the possession of the master. The
 10. The goods are not in the possession of the master. The

proceed upon the ground of an Private Relation
agent independent by the master - he using
the article is considered an implied consent
to the discharge - But in the present case the
master, ^{by the} position ignorant of the trust - &
how can a man be ^{to} ignorant of what is in front of
him - he should know the existence of such an ex-
ecutory contract - & the law can never suppose
that he was ignorant of it. The fault ^{on his part} lies upon
the trader - & not upon the master - for the mas-
ter did not intend to give the servant credit
with the merchant - but the merchant was so
inconsiderate as to trust him & the gen. rule is
that if one of two innocent persons must suffer
by the act of another - the loss ought to fall upon
him who trusted the rogue.

But tho a master has given a trust to the ser-
vant by permitting such servant to trade in his
name - he may discharge himself from fu-
ture liability - by forbidding such servants
from trading the servant on his account
& if the credit of the servant had been public
he may discharge himself by advertisement
But the master cannot countermand the ser-
vant authorize to contract by any thing known
to him - the master servant, nor will
the law take it charged with liability by a declaration

Master & Servant. of the relation of master & servant
 which such dissolution be actually known & con-
 sidered. merchant who binds the servant in the master's
 5th. account or unless the same be a matter of pub-
 lic notoriety or common reputation - and the
 same rule in such cases that the prohibition not
 10th. to trust in the notoriety of the dissolution when
 it may be as public as the credit before given to the
 15th. servant. If a servant in making a warranty
 17th. contract - as selling goods - makes a warranty
 as to the quality of such property - the master is
 bound by that warranty unless the master
 20th. has expressly restrained him from making a warranty
 25th. only - and where the servant in making
 a contract of warranty act within the scope
 30th. of a general authority - even an express re-
 striction - not made public & not made known
 35th. to the purchaser will not exonerate the mas-
 40th. ter. But if the master had expressly prohibited
 the servant from making a warranty - then the
 45th. master will not be liable on the warranty. But
 it is asked what is the difference & the difference
 50th. is that in the difference & the difference is
 55th. whether the servant is authorized to make a warranty or not. Suppose the servant
 60th. of one having a Liverpool whole sale business
 65th. is a servant here - warranty a whole
 70th. the servant - the as the case is, and of the

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master put the matter with double private relations
because he acted without authority - the purchase was a private & not
one that the servant had authority to make
- & the notwithstanding they are private re-
striction under the purchase. Now sup-
pose one be authorized to sell a horse & receive some
with an express restriction not to receive & so on.
Here is no gen. authority - the purchaser has no reason
to believe the servant had authority & called
himself - he may perhaps infer from seeing
him entrusted with the horse that he had a right
to sell but not to receive him round. But if
the servant had in fact no authority & sell
the purchaser cannot even hold the horse as
the master - the purchaser takes the risk
when he buys - & a tortious he takes when he
takes the horse and the servant right of ownership
& no action will lie on the matter on such facts.
This rule says the Gold in connection with
some other sense & good reason. It appears that
a very leading case in England - but the case
is of questionable authority. The case was of
having a counterfeit jewel sent to the court of
Barons for the purpose of selling it to the King of
one of the barons powers - to put it into the hands
of a broker living in London because it was more likely.

The story of the King's horse. After
 1. The horse was sold to the King & delivered to the
 25. Let it be the horse was improved till he died
 30. 9000 - & now brought in action as to the
 40. the original owner & it was held that the
 50. the action would not lie because it did not
 60. properly command his servant to do so
 70. But according to the rule before laid down he
 80. in such case would have been liable - as he did
 90. hold a not expressly prohibit the servant from using a

5. Another case is to be found in the books on this
 10. subject equally questionable. It is laid down as a
 20. rule that if the master directs his servant to sell
 30. his ware at a public fair & ~~the~~ ^{does not} sell them
 40. to sell to any particular individual - the master
 50. is not liable on the implied warranty that the
 60. horse is sound. If a merchant clerk sell the
 70. goods of his master & misrepresents the quality
 80. the master is liable

The servant himself is not regularly liable
 10. for contract made by his master - but the
 20. servant expressly takes upon himself to be
 30. responsible he may not be himself liable
 40. & the master - but when he takes upon him
 50. the responsibility he is not out in the way
 60. of the act of servant - but in his own right - under the
 70. 80. of his master. Thus if a servant sell a horse &

contract is in the name of the Private Secretary
to the President of the United States - the servant
of the President is the one who is authorized
in a contract which is entered into in the name
of the President - when he is so authorized, then
the matter entered into is valid & the contract is
valid & of which the matter itself is valid & the
the contract must be heretofore valid. The mat-
ter is not liable to the President & no one else
can be liable if it is the contract & the contract
is valid - for some one must be liable
when one assumes a contract without author-
ity he only is liable. And it must here be re-
solved that one who acts in another's name
is not liable - it is the contract which is valid
for the matter - that is a valid contract which
is not liable - he is bound, for he is not liable - so
- some one else is liable - it is the contract which
is valid - the contract is valid & the matter
is valid in the contract. And that, how inter-
ested a man will be in the subject - it pro-
vide that any person under the government
a master, parent or guardian who is not inter-
ested & allowed to contract for himself the contract
does not contract for himself the parent, guardian & others
shall be bound by such contract - & such contracts
as of the servant are according to the decision

[illegible]

Master & Servant. If the servant in the course
 of his master's business does an injury to
 any one - & the master negligence - ignorance or
 want of skill the servant as well as the mas-
 ter is liable to the party injured provided the tran-
 saction in which the servant was engaged was
 108 not founded upon any contract express or im-
 110 plied between the master & the ^{injured} party. Thus
 112 suppose the servant drives a carriage in the
 114 service of his master & orders - & by negligent
 116 driving injures the carriage of another - the
 118 servant as well as the master is liable & the rule
 120 is the same tho' it were done from ignorance or
 122 want of skill. Every person committing a tres-
 124 pass is liable unless shown to have acted in
 126 self defence - the law of trespass does not regard the
 intent - when the action is brought ag. the party
 immediately in wrong. Suppose the servant
 drives his master's carriage ag. the person of an-
 other - whether without or not the master is li-
 able - & so it is if he runs ag. another while on
 130 his own business & the master is liable & negligent. But if
 the transaction in which the servant was en-
 132 gaged at the time of the ^{injury} was founded upon
 a contract express or implied between the mas-
 ter & the injured party & no one else, the rule
 134 that the master only is liable & the servant not liable

does not say, with regard to the private relations
between the master and the servant, the servant is not
indemnified in the books - but I suppose the
the case will support the position. Suppose an
apprentice of a blacksmith, having a horse thro-
wn upon him - the master only and the apprentice is liable
the servant cannot be considered as a wrongdoer
a trespasser - Now if the blacksmith himself had taken
negligently done the injury he could not be a trespasser
because of the bailment - he has the lawful con-
trol and the servant by virtue of his position
relates. The injured party has no right to com-
plain except as to the injury arising in the
breach of the implied contract & since the horse
was in the custody of the master, but not out of
the custody of the servant can be no party to
the contract - Hence it follows that the master
alone is liable. As to the rule, several have some
scruples & the reason of it is, that the rule is
immediately recognized as a rule laid down by
the master of a ship, liable as well as the owner
to the freighter for any damage occasioned by the negli-
gence of the master even tho the freighter was
loaded in a contract between the owner & freight-
er only. The rule is founded upon general com-
mon sense & policy. The owner & freighter are often cit-
izens of foreign countries. The master is a native born.

Walter Loomis - the master for the case & my
my office at the same time a clerk - this was a
little more than the others

There is a little black & white portrait in an
"Argosy" magazine, early, I think.

[illegible]

Master & servant - whether they become partners in
 100 business or not, the servant is not liable for the
 100 master's debts. But no action will lie against the servant
 for a loss incurred by the master's creditors where
 no damages accrue to the master's creditors.
 141d. If the master directs his servant to do
 208 all his work & he does so, or does any other work
 & does so in consequence of ill treatment, or after
 141d. the servant's. No legal injury is done - the master
 141d. is a master & servant of a freeholder. But
 141d. if the servant is injured by neglect to his person or
 141d. limb, or property of the master & the latter
 208 does any damage in consequence - recovery may
 141d. be had against him. And the rule is the
 141d. same where there is a neglect of duty on the
 208 part of the servant & consequent damage to
 141d. himself by the master - the master is liable.
 141d. And if an attorney neglects the estate of his client
 & does so he is liable on the implied contract
 141d. to do the business of administering what is
 141d. entrusted to him with the same care as the person
 141d. himself would exercise in the same business.
 141d. That the servant is not liable for damages
 141d. taken for his person & property & not for damages
 141d. taken for his strength or skill - a person for his strength
 141d. is not liable for damages occasioned by his own
 141d. loss of strength, but for damages occasioned by his
 141d. loss of strength & skill - a person for his strength
 141d. is not liable for damages occasioned by his own
 141d. loss of strength & skill - a person for his strength

that the defendant has not all Private Relations
 as well as public are destroyed & he is in a worse
 state of the several spheres of action as never
 independently there needs still the consent
 is not made as the injury is to the nation in
 reality. See an excellent & true view - that
 where one undertakes to do work in the line
 of his profession or occupation - here the ser-
 vant implicitly undertakes not only to fulfil
 his duty but also to do so with strength, skill
 & diligence and to do so as a journey-man, give
 him wages for all necessary skill will be re-
 quired & he is liable to him in the profession
 & for a breach of such implied engagement
 on the ground of negligence such a journey-man
 would be liable & in a similar case. But
 in conformity to the principle the servant is
 not in general liable for the various faults
 when committed, even when by holding. Caution
 & diligence & fidelity can be no ground against
 a servant where the fault is not imputed
 by reason - where a fault is so connected with the whole
 service as to be liable not on the ground of ability
 & diligence & fidelity - but on the ground of the
 fact that the servant has done some act
 for which he is liable as a whole man, of
 diligence & fidelity are no sufficient security

Master & Servant - The Servant will be deemed
 1070 a tortfeasor for losses occasioned by accidental
 1080 accident - as if by negligence -
 and as the Servant is liable for the master for
 any act immediately injurious to the master
 in general the Servant is liable over to the
 master - where the master has been subjected
 1090 to an injury to a third person occasioned
 by the negligence of the Servant. If the mis-
 1100 take or neglect of the Servant has subjected the master
 1110 to loss - it follows that the Servant is liable in
 damages to the master - thus if the Servant drives
 the master's carriage negligently so as to injure
 the master he is liable - the Servant is
 liable over to the master. This rule however
 1120 does not apply to cases where the master is
 1130 actually a party to the wrong done - either
 1140 as a party or joint tortfeasor - for in these
 1150 cases the Servant is liable to the master
 1160 as a servant - One tortfeasor cannot maintain an
 action against another for his separate tort
 or the master's recovery - this is a rule of tort
 law - In negligence not other acts.
 as to the Master's liability over the Servant -
 The master has by law a right to discharge
 the Servant for any breach or neglect of duty
 or for disobedience or violence or ill manner for

This right of the master is not a Private Right. It is
more than a right peculiar to the individual. It is
the relation - It is the power in the master to
the power of administering domestic law & order.
without domestic government 179
all civil governments would be of little or no
avail. The right of domestic government is
a right of the relation of master & servant - It is the
master's right to command - he must have 70
a right to enforce the command by reasonable
correction. If this right of correction does not 228
exist he is remediless - so as there is no pecu-
niary damage by a mere disobedience or action
can be maintained. But the correction to be
justified must be reasonable. - It must in
some measure be discretionary with the mas-
ter as to the severity of the correction. But he
is not absolute & arbitrary in all cases. There ex-
ists which in brutal cases may be justified.
However courts will not in such cases leave a mas-
ter at the complaint of a servant - the mas-
ter is not to be punished merely because one or two
individuals think the punishment too severe. 230
But even will be it right to be satisfied that they
listen to complaints of this kind - on principle of 8. 102.
justice - but an interference by the law is not
want to be shown & is not to be shown - they will always

I have not time to take into consideration the
 various objections which have been made
 to these rules are all in some measure answered by the
 provisions. The same rules apply to all
 masters - there was correct moderation.
 But these gen. rules cannot apply to every
 case & circumstance - but the General is never
 singularly remarkable that the Elementary
 school should be the same as the gen. rule with-
 out discrimination between the various classes
 of servants - there cannot apply to the same class
 of servants - it would be a very extraordinary
 case for a schoolmaster to admit his scholars or pupils
 & have singular still to be a school which is
 in itself - such a thing was never known
 under the name of right. No man can be so
 in doing that the right of correction is not ex-
 ist as between the master & servant & is not
 that as to the master & servant & is not
 whether the master has the right of correction
 It is certainly not practised in the same way
 I have no idea that the master has any
 more than the employer of a factor or a hired
 man. The schoolmaster is not a master at
 the master's service - so that there can be no re-
 sult & control in administering domestic cor-
 rection. I do not believe in any of these things

I apprehend very little doubt that Private William
the only relation of the master's right per-
sonal estate, and other personal property
belonging to him. I consider the master's
property more than a branch of the personal
right & a master domestic servant is
treated by the law as one who is
as a part of the family and consequently
is - But it is not to be understood that
all services in the house are within the same
such as the house - The master may wish to
employ his slave as a servant - or as a
gentleman in the state - or as a
but to the master as a right & correct - for the
to be sent on a voyage or to the other place
& to be sent - It is said that since a right to
depart - However, we will consider the
moral, civil & medical aspects.

[illegible]

and the defendant is liable against Private Plaintiffs
 third persons for damages sustained or incurred in consequence
 of an injury to the servant. In some cases the
 defendant is liable to recover of third persons for a
 wrong done to the servant in consequence
 of which he has sustained a loss or damage
 from the injury done to the servant. Hence so
 if one commits an act against a servant he is liable
 to the master for the loss or damage - the
 action being given with a per quod - the action is also
 given to the master for the loss of the servant - and
 if once a servant is lawfully taken away from
 by another the master may maintain an action
 against the taker with a per quod - a trespass for the
 civil damage - & there is the proper form of action
 then for the recovery. In the common law when the
 the servant is injured the action is given with a
 per quod to the master with a trespass. But if the
 injury is a direct trespass without any other damage
 to the master - as if a man is injured by a lion
 or other animal of the same kind the action is
 given with a trespass. But if the injury is a
 trespass to the person and the master is injured
 as well as the servant - as if a man is struck
 and is wounded and the servant is also wounded
 the action is given with a trespass - and the
 master is liable for the loss of the servant - and the
 servant is liable for the loss of the master.

[illegible]

thoughts - This action is a direct result of
 our view on the relation of law to right
 and that is, that law is a mere instrument
 to a higher end - in the present situation - it is
 to be used to maintain order & to prevent
 disorder in other respects & maintain order where the
 service is merely negative - in the service of
 a public good, the relation of law to right is a
 positive one. But it is a mistake to see the law in this
 light - the law is a right & the service - the ground of
 the action arises from the relation of the law to
 the right - but the real ground of the right arises
 from the relation of the law to the right.

I am not aware of any action in such a manner held
 that the ground of the action is a remedy 895
 the remedy is a right in the offense - The doctrine of
 the law is that the law goes upon the ground that
 no offense of a certain nature is left after a
 satisfaction in the public place. - It being a case
 of offense - either person or property are left
 without any remedy in the injured party & thus in
 the public place - leaving the law in the hands
 of the law - the law is a remedy - the law is a
 remedy in the law - it is a remedy & conclude that
 in the law where the offender's property is not
 the law a civil remedy - remedy in the law
 is a remedy in the law - because means are not

Master & Surgeon. In a London case, it was
 held the wound & consequent injury to be
 18 Under treatment so that the master is
 liable for service by reason of neglect to send the
 200 master was liable for return required for
 & the return amount of the Surgeon. But say
 220 it should be held in a case laid down that
 if the injury is occasioned by the negligence or
 240 unskillfulness of the Surgeon - the master may
 have his action for damages. The rule as laid down
 is that if the injury is occasioned by the negligence or
 260 unskillfulness of the Surgeon - the master will not
 be liable for service if the injury is occasioned by
 280 the negligence or unskillfulness of the Surgeon. Some
 300 cases since the 18th & 19th c. that the action will
 320 not lie in favour of the master - also some cases
 340 that the action will lie in favour of the master
 360 in such case as the Surgeon - but it will be
 380 held in such case the master is liable for
 400 injury - he himself being the patient. This is
 a case where one may be damaged without
 any remedy.

(Pl. 1) In the case of enticement or retention. However
 587 if the same person a recovery had & full satis-
 600 faction received of the amount is a bar to
 620 an action of the stranger for such enticement or
 retention. The master shall not have satisfaction
 640 but whether a recovery merely without satisfaction

[illegible]

Master's duty - the consideration it would be reasonable to suppose a recovery against the Master should be in the action on the demand. But no more than nominal damages could be expected - the being a matter of fact & not of law.

1811. 1st & 2nd cases which the master & servant may justify in and it was observed - at law. Since it is an offence since either an interference or one to assist & assist another in committing an offence - but a defence would be a sett & assist in the matter in which it is not & not to justify of no assistance. Wherever a slave was also justly a battery in a case of his master's where the master himself could justify. The same battery - any individual may interfere to prevent a breach of the peace but a servant when his master is assaulted may do more, he may put himself in the place of his master & justify any battery which the master could have been justified in committing. But a servant cannot justify a battery in defence of his master's person or domestics or other persons whom he is not there a stranger - therefore a servant is not a stranger because he is there, he does not stand in the relation of a stranger to them. The servant may justify in a battery in defence of his master's wife - but

he cannot in defence of his man. Private Relations
too good - his right should only extend a little.
The absence of the master is not a reason. 148

Whether a master may justify a Battery in
service of his servant is a question not yet
settled - those who advocate the negative say
the master can justify by action for the
service. This reason says the Court is
not satisfactory. What if the servant is
wrongfully & without the owner's consent. It is a del. the
master altogether precarious whether he can have a
justification otherwise - & must be stand & look. Let
us see his servant's position - his service is not a
del. his service is a right - a property - But a Master
any man may justify a battery in defence of
his servant - his servant's right - or he may have done
an action for the del. - & because he may have done
nothing in the matter why he may not justify a battery
in defence of his goods - & therefore - it
is not out of all in case of battery in de-
fence of one's servant. To take the latter position
is to say for the fact that the master may justify
a battery in defence of his servant. This is the
position of the Master's right to act & defend.

Parvula Opilio - - according to some of our friends it is
(1844) - the same as the one which was found in the
Hudson river - the same as the one which was found in the
(20) same of the same kind. It is between the same and the
which has it is against the same. The difference in the
(21) only that the same is found in the Hudson river
Hudson river the same as the one which was found in the
(22) appeared to be no more distinct in the Hudson
(23) the same as the one which was found in the Hudson
Hudson river the same as the one which was found in the Hudson

[illegible]

[illegible]

Parent & Child - Because the law on receiving civil
 injuries does not at all regard the intention with
 which the act was committed. Criminal law
 regards the intention - but in cases civil in-
 jury the enquiry is not whether the tort was
 intended or not - not whether he is guilty
 but whether he did the tort. - The intention may
 aggravate or extenuate the damages. - There is one
 instance in the books in which an infant may
 be responsible ^{for tortious acts} and in a ^{case} of assault & battery - &
 it was not contended that the action did not lie.
 There is a distinction in principle between a
 public & private wrong. It is wholly wrong
 to one & to justice that a person should be
 punished for an offence where there is no malice
 or intent to commit it. but in the case of a civil
 injury it is always equitable that the party
 injured should have a compensation. As it is
 a maxim in law as well as in equity that where
 one of two innocent persons must suffer by an
 act it shall rather be the suffering party. It
 has been acknowledged that an infant of seven years
 is liable in an action of detinue. Now it is
 inferred that one who is seven years of age
 is liable in an action of detinue. There
 is no case in which an infant under 7 years
 has been held liable in an action of detinue.

It is otherwise with contracts as to the Private Militia in
 India - as it is in England and in the United States
 the law is it is no contract - it is a contract
 and is against the other party - it must there-
 fore be void as to both parties - the contract is
 a local one only & the law is not bound to be the same
 It seems to be well settled that in the Indian service
 the consideration moving to him and afterwards void
 under the contract - he is not bound to restore it 140
 but the law seems to be as a present one it is not 145
 however been disturbed in practice in this case and
 then of course would not be where the consideration was
 is specific - or indeterminate and important where no. 215
 was paid - on account of the contract - but the 215
 book is not correct the opinion is that either of these
 these actions would lie. Tho it be a general rule 215
 that infants are not liable for their contracts 145
 yet contracts for necessaries are always binding 160
 upon them - These necessaries consist of food 165
 clothing lodging medicine & instruction - and such other
 or things as are necessary to keep the infant 170
 from perishing. - These articles in order & such 175
 the contract binding upon him must be necessaries 180
 at the time of the purchase. The situation 185
 and rank of the parent must be taken into con-
 sideration in determining whether they are ne- 190
 cessary or not - and in all cases when the plea

See App.

Parent & Child - of influence in fact - it is matter of
 fact to the court to determine whether the ar-
 ticles furnished were necessary or not. - But the
 Ex. in the above instance - the father in his reply
 to the court may allege generally that they were ne-
 cessary & conclude the matter. - where as where
 it is matter of fact the father would have to show the
 facts & what were the things he furnished. The in-
 stant has the same power & right & is in the same
 manner liable for goods purchased for his wife
 or children as for himself. & even as the law
 allows him to make the principal contract of
 marriage - it gives him as much the neces-
 sary & consequential power of binding himself for
 whatever is necessary & convenient to the support
 & comfort & convenience of the family. So also he
 is bound by the contracts of his wife precisely as an ad-
 ult would have been & this even where he would not
 have been bound had he made the contract himself.
 So it be true that an infant may bind himself in
 necessities - yet it be true a parent guardian or mas-
 ter & this parent guardian or master does actually
 provide all necessities - his contract can be
 from what has been said it follows that an infant
 can bind himself in necessities - first when he has
 no parent guardian or master - secondly when
 having such parent guardian or master they are

out of his reach & the ²⁴ other main Private resolution
from he is not actually provided for. As the Court has
the right is found in the contract of his children
made in his ~~own~~ name. But in Court it must ap-
pear that the child ^{or} children did it with the as-
surance or at least with the tacit consent of the parent.
There is an old rule in law a Statute which is
supposed to introduce a new rule with the intent
never to bind himself for negligence. The Stat. com-
pels the parent to fulfill the contracts of their
child made in the name of the parent, & which
has permitted the infant to make such a contract
in his name. The Stat. says more under the government
so that if he have a piece of property he is clearly
not with the letter of the Stat. & yet if he have
more than but is ill provided for he must either
be thrown upon the mercy of the public or pay
for when he has a property & an independent amount. And
it is must be permitted to bind himself by the con-
tract. The latter resolution is unquestionable. 237
the better opinion for in such case he is not with-
in the spirit of the Stat. - can infant may make 583
towards the amount of his own contract - but not
only to the true value of the article purchased. Thus, 513
if an infant expressly bind himself to pay for the Sept. 5.
the value of the article - he will in fact be bound to the
value of the article - or rather the quantum valued. Latch. 60
500-700

Parent & Child. An infant cannot bind himself by a
 100 52 penal bond - & this however may be - the con-
 101 164 sideration may be - & the reason is because the
 102 168 consideration or item of the account in which
 103 170 bond cannot be inquired into. So also for the
 104 172 same reason he cannot bind himself in exchange
 105 174 is not bound by a negotiable note when actually
 106 176 executed. But by a single bill given for the precise
 107 178 liquidated sum due ~~and signed by him~~ or by a
 108 180 negotiable note or bill ~~of exchange~~ not actually ne-
 109 182 gatiated - or a note not negotiable the infant may
 110-111 bind himself - provided the consideration be recit-
 112 113 ed as in 172. 174. 176. 178. 180. 182. 184. 186. 188. 190. 192. 194. 196. 198. 200. 202. 204. 206. 208. 210. 212. 214. 216. 218. 220. 222. 224. 226. 228. 230. 232. 234. 236. 238. 240. 242. 244. 246. 248. 250. 252. 254. 256. 258. 260. 262. 264. 266. 268. 270. 272. 274. 276. 278. 280. 282. 284. 286. 288. 290. 292. 294. 296. 298. 300. 302. 304. 306. 308. 310. 312. 314. 316. 318. 320. 322. 324. 326. 328. 330. 332. 334. 336. 338. 340. 342. 344. 346. 348. 350. 352. 354. 356. 358. 360. 362. 364. 366. 368. 370. 372. 374. 376. 378. 380. 382. 384. 386. 388. 390. 392. 394. 396. 398. 400. 402. 404. 406. 408. 410. 412. 414. 416. 418. 420. 422. 424. 426. 428. 430. 432. 434. 436. 438. 440. 442. 444. 446. 448. 450. 452. 454. 456. 458. 460. 462. 464. 466. 468. 470. 472. 474. 476. 478. 480. 482. 484. 486. 488. 490. 492. 494. 496. 498. 500. 502. 504. 506. 508. 510. 512. 514. 516. 518. 520. 522. 524. 526. 528. 530. 532. 534. 536. 538. 540. 542. 544. 546. 548. 550. 552. 554. 556. 558. 560. 562. 564. 566. 568. 570. 572. 574. 576. 578. 580. 582. 584. 586. 588. 590. 592. 594. 596. 598. 600. 602. 604. 606. 608. 610. 612. 614. 616. 618. 620. 622. 624. 626. 628. 630. 632. 634. 636. 638. 640. 642. 644. 646. 648. 650. 652. 654. 656. 658. 660. 662. 664. 666. 668. 670. 672. 674. 676. 678. 680. 682. 684. 686. 688. 690. 692. 694. 696. 698. 700. 702. 704. 706. 708. 710. 712. 714. 716. 718. 720. 722. 724. 726. 728. 730. 732. 734. 736. 738. 740. 742. 744. 746. 748. 750. 752. 754. 756. 758. 760. 762. 764. 766. 768. 770. 772. 774. 776. 778. 780. 782. 784. 786. 788. 790. 792. 794. 796. 798. 800. 802. 804. 806. 808. 810. 812. 814. 816. 818. 820. 822. 824. 826. 828. 830. 832. 834. 836. 838. 840. 842. 844. 846. 848. 850. 852. 854. 856. 858. 860. 862. 864. 866. 868. 870. 872. 874. 876. 878. 880. 882. 884. 886. 888. 890. 892. 894. 896. 898. 900. 902. 904. 906. 908. 910. 912. 914. 916. 918. 920. 922. 924. 926. 928. 930. 932. 934. 936. 938. 940. 942. 944. 946. 948. 950. 952. 954. 956. 958. 960. 962. 964. 966. 968. 970. 972. 974. 976. 978. 980. 982. 984. 986. 988. 990. 992. 994. 996. 998. 1000. 1002. 1004. 1006. 1008. 1010. 1012. 1014. 1016. 1018. 1020. 1022. 1024. 1026. 1028. 1030. 1032. 1034. 1036. 1038. 1040. 1042. 1044. 1046. 1048. 1050. 1052. 1054. 1056. 1058. 1060. 1062. 1064. 1066. 1068. 1070. 1072. 1074. 1076. 1078. 1080. 1082. 1084. 1086. 1088. 1090. 1092. 1094. 1096. 1098. 1100. 1102. 1104. 1106. 1108. 1110. 1112. 1114. 1116. 1118. 1120. 1122. 1124. 1126. 1128. 1130. 1132. 1134. 1136. 1138. 1140. 1142. 1144. 1146. 1148. 1150. 1152. 1154. 1156. 1158. 1160. 1162. 1164. 1166. 1168. 1170. 1172. 1174. 1176. 1178. 1180. 1182. 1184. 1186. 1188. 1190. 1192. 1194. 1196. 1198. 1200. 1202. 1204. 1206. 1208. 1210. 1212. 1214. 1216. 1218. 1220. 1222. 1224. 1226. 1228. 1230. 1232. 1234. 1236. 1238. 1240. 1242. 1244. 1246. 1248. 1250. 1252. 1254. 1256. 1258. 1260. 1262. 1264. 1266. 1268. 1270. 1272. 1274. 1276. 1278. 1280. 1282. 1284. 1286. 1288. 1290. 1292. 1294. 1296. 1298. 1300. 1302. 1304. 1306. 1308. 1310. 1312. 1314. 1316. 1318. 1320. 1322. 1324. 1326. 1328. 1330. 1332. 1334. 1336. 1338. 1340. 1342. 1344. 1346. 1348. 1350. 1352. 1354. 1356. 1358. 1360. 1362. 1364. 1366. 1368. 1370. 1372. 1374. 1376. 1378. 1380. 1382. 1384. 1386. 1388. 1390. 1392. 1394. 1396. 1398. 1400. 1402. 1404. 1406. 1408. 1410. 1412. 1414. 1416. 1418. 1420. 1422. 1424. 1426. 1428. 1430. 1432. 1434. 1436. 1438. 1440. 1442. 1444. 1446. 1448. 1450. 1452. 1454. 1456. 1458. 1460. 1462. 1464. 1466. 1468. 1470. 1472. 1474. 1476. 1478. 1480. 1482. 1484. 1486. 1488. 1490. 1492. 1494. 1496. 1498. 1500. 1502. 1504. 1506. 1508. 1510. 1512. 1514. 1516. 1518. 1520. 1522. 1524. 1526. 1528. 1530. 1532. 1534. 1536. 1538. 1540. 1542. 1544. 1546. 1548. 1550. 1552. 1554. 1556. 1558. 1560. 1562. 1564. 1566. 1568. 1570. 1572. 1574. 1

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It is true that a single bill is not now Private Relations
examinable - but when the rule was first laid down
that an infant is bound thereby - the consideration
might be inquired into - it also being to be found in
which it is said a single bill is not examinable where
the obligor is an infant it is presumable that in
such case it would be examinable. In Comm. Courts
have incidentally considered note or bond by mi-
nor ~~as to the respectability of the debt~~ ^{as to the respectability of the debt} - the cases
are not examinable and more than bond in ~~Ex. ^{quod}~~
~~exclusion ^{quod}~~ ~~of the debt~~ ^{of the debt}. But suppose the
infant binds himself in a bond - there a-
rises a question whether the infant is not liable
on the original contract. If the bond is absolutely ^{void} ~~void~~ ¹²⁸
void then it is agreed that he is liable - for it being
legally, or momentarily did not annul up the original
contract - But if the bond is voidable only then it stands
is said no remedy can be laid against the infant 1078
after the bond is declared to be void - for the bond ^{void} ~~void~~
merges the simple contract. But says Mr. Gould the 90
same reasons will apply in the one case as in the other 11th.
either considering the simple contract as not ^{void} ~~void~~
void. And therefore says he I conclude that in both
cases the infant is liable on the original ¹¹⁷ ~~117~~ ^a
simple contract. Thus if ~~contract~~ ^{upon} is bound in a bond ¹¹⁷ ~~117~~
his obligation to another in the sum of 5008 - and at ²²⁰ ~~220~~ ^a
assuming to be upon being 5008 more consolidated

Parents Child - them - this security or bond is absolute
100 void - but the former security for the good remains
101 is a bond - they shall not share the fate of the void in-
102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120
121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140
141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160
161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180
181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200

education of a young gentleman would Private Relations
be valid - while those for an indigent person would
not be valid. This is matter of fact & is left to the
jury. It was decided in the recent case that child
contracts of an infant in dancing were not valid 466
but some could as the fashion of the time have them
considerably affected since that he might be dancing
now considered almost a necessary part of a child
an education - it is presumable that contracts of this
kind would now be binding upon an infant. If an infant
does voluntarily what he is bound in law or equity
to do it shall be binding upon him as if he did it under
the order of a vice-chancellor. An infant when appointed
administrator is bound by a decree in like manner as an adult
is. But is indulged with six months & a day after he has
seen at full age to retract it if he finds it error. 581
An infant is bound by a decree in like manner as an adult
is. 626 bound by a decree as an adult unless there appears
to be fraud or negligence in the proceedings of a Guardian 75
An infant is bound by a high contract which he may
by law be compelled to make as the mortgage of the
land - selling off the widow's dower &c. An infant
when he acts in the character of a representative to the
as entre droit is bound to his executor - as a child of the
executors - & in such case the rule is that what he does
the infant are regularly binding as if not a fact 106 575

Parents & child - his own interest but above their free
 1466d. from his authority. These contracts are void
 1467d. which are voidable only, may be ratified by him
 1468d. when of full age - & after such ratification they are
 1469d. as binding upon him as if made after full age.
 1470d. But a void contract can never be ratified. In case
 1471d. of a promise after full age - the infant is liable on
 1472d. to the extent of this subsequent promise. When
 1473d. only one is mid-bleeds, & the other is a minor
 1474d. & the promise is after full age - the one who is a minor
 1475d. is not liable on the debt to show that he was not of
 1476d. full age when the subsequent promise was made and
 1477d. the reason is because the debt is a matter confined
 1478d. to his own mind. If an infant gives a security dur-
 1479d. ing minority which is absolutely void & after full
 1480d. age makes a promise - this promise will lay a founda-
 1481d. tion for an action on the parole contract tho' it
 1482d. can never set up the void security. When an instru-
 1483d. ment is absolutely void - the subsequent promise
 1484d. must be made the foundation of the suit & not the
 1485d. original security. But where the instrument is
 1486d. voidable only tho' it can be proved to be void
 1487d. in the original instrument - & leave the debt & the promise upon them
 1488d. in the original instrument - & after full age.
 1489d. If an adult with interest in a lease with an
 1490d. infant obtains a renewal of it in his own name
 1491d. he shall be deemed to have obtained it for the

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The intent of the intent of the a. & Private Relations
and one may claim a right of it. It can in be
furthered on a contract by which it is not 502
furthered by the intent of the a. & Private Relations
intention under the same. 55-5-54
as to what contract of the a. & are Void & what 504
voidable - the a. & rule of the a. & is that a contract 810
contract which have a semblance or a appearance of a benefit
benefit to the intent are voidable - but on the other 511
hand those which have a semblance or a appearance of a
benefit are void as void. Thus a power of attorney 820
to accept a lease of a freehold is voidable for then on a lease
the first benefit appears of benefit. An indenture 905
of an indenture slave is voidable only - as where a man & his
parent in the West Indies when going to England & re- 2-3-8
side took an indenture of one of his slaves in which it was
it was stipulated that the slave should serve him 1808
in Eng. - no one being allowed to serve slave in Eng. & Wales
But if an indenture were a lease without receiving 730
rent - it is void because there is no apparent benefit of
a benefit. But it is said that a case of the kind where 105
this point has been extremely decided is not to be a
land before the a. & the whole court entered 916
into a very solemn examination of the a. & the
a. & decided that a lease is voidable only. But 957
court would have been in the most considerate
of all contracts. But voidable without a void. 102

Parents & child - It is clear & undoubted that the
 3000 lease can never take ad advantage of the infancy
 1806 of the lessee - & as the principle distinct is before
 5115 a void & voidable contract is held in the - same
 1806 neither party is bound but in the latter one party
 518 only is bound - it would seem to be clear on the
 1806 ground & principle that a lease of this kind with
 502 out reserving rent is voidable only. In fact
 1806 as it is not allowed now at common law to bind a child
 78 or at the same time - 1106. 74 - 1106. 578 - 1106. 25
 5106 of 1106. 20 - 1106. 281 - 1106. 64 - 1106. 320 - 1106. 106
 505 1106. 164 - 1106. 1804 - 1106. 12 - 1106. 154 - 1106. 428
 1806 The a penal bond is void as against an infant yet
 270 infancy cannot be given in evidence under the
 5106 gen. issue - for the rule that whatever makes a
 5106 contract void may be given in evidence under
 5106 the gen. issue - is not universal. If an infant be
 1106queath his personal property for the payment of
 1806his debt - Court of Chancery will enforce the
 515 payment of a penal bond as well as otherwise
 5106 where clearly that Chancery considers penal bond
 1806as merely voidable & not void. Ex. 282 - 1106. 405
 1806 The first part of the rule - viz - that it is voidable
 74 where there is semblance of benefit to the infant
 1806relative to purchases made by the infant - the latter
 506 viz that it is void where there is no apparent benefit
 1806to the infant - relative to his duty as a son or as a

(Hornell & Child) - is not cord as a commercial rule - but it is
 a rule in some cases as a qualification of the rule given
 above where the nature of the case is such that the rule
 will not be effectively lost the benefit of the
 privilege - as when a ship entered into a contract
 with a Barber & take her on board, then from the
 day of a certain price & the Barber shared it
 and got close - but the contract was not the word &
 at the Barber subjected to a charge in the case. I see
 in the contract of the Barber - as Barber & Child & Child
 which from my view such bills are payable only
 when it is paid & subject to arbitration is only payable
 when it is paid - I see in the case of the Barber & Child
 & Child & Child - there are two contracts - one
 & take into a contract - wherever they are made
 & persons may take advantage of them in the contract
 & Child - but where they are payable only - that, partly
 Child - for whose benefit they are made payable & in re-
 spect to the present case, can take advantage of them. In
 the case of a real contract there is no consideration
 & Child - but if it is payable only - a liability is not
 given at consideration. In the contract is real
 the case of the contract is a consideration when
 the article is payable only, the case is not. It can
 not make a payable an occurrence of real property
 & Child - in the present case (as in the case of a
 & Child - take advantage of them in the contract

voidable contracts may be confirmed Private Relations
adult age - But a void contract can never be stated
validity - The rule location of a voidable contract does
may be either express or implied. If it is an infant's gift
first continues on loaned premises, after the term such as
is out, or after he comes of age - or does any other act manifestly
manifesting an intent to confirm the conveyance &c. &c.
he is liable for the rent previously received. Lord in 31
last how an infant may avoid a voidable contract &c. &c.
the infant having conveyed an estate by fine and purchase
from receiver - may avoid or confirm the conveyance either
by writ of error during his infancy but not after he comes
It is held by some that a settlement or gift in some persons
being called settlement is say - may be avoided after the pe-
riod of infancy - but this is not true for any act by which
which he could possibly avoid such settlement is itself void
void in infancy. It is more settled that it is voidable &c. &c.
and after majority - & he re-enters during minority & then
a third person cannot take advantage of his minority &c. &c.
stat. 12 Geo. 3. c. 36. s. 8. & 11. 161. & the doctrine in in-
fancy settlements agreements are not binding &c. &c.
at law - But in equity, as a person who is voidable &c. &c.
ing. & many consider these contracts binding if the
man be proved that he was at the time of the transaction 152
& was the principal contract in a marriage &c. &c.
it allows them by implication to bind themselves by &c. &c.
an account with the receiver &c. &c. into the principal

[illegible]

be bound to say that the two are Private Relations,
 and that the law in the nature of things is to show
 specified. as in the two contracts of marriage & of
 be ratified when he comes of full age - so in the same
 may be ratifying a contract made in him by a
 third person - then too he may do by an act that is
 in him and ratifying his own contract. as when
 the mother & the children leased a house for
 40 years - these children after they were of age
 continued to receive rent & it was held they
 were bound by the contract.

as to What powers an infant may exercise.

of power is an authority conferred by one person on
 another in relation to some right or interest belonging
 to the person delegating it. It is a general rule
 that infants cannot execute a general power & of
 over real estate - because a general power al-
 ways requires the exercise of discretion which is
 legal presumption an infant always wants. But
 an infant may execute a special power - or the pro-
 bial power in which the infant acts as a mere
 instrument & no right of his can thereby be affected. He
 can in no case exercise a power over his
 own inheritance. Sir H. G. says there is no
 case or precedent in law or equity to show that
 a power over real estate can be executed by an in-
 fant. But this rule is laid down too broadly.

etc to what others might not do. The general

bro. E. rule in that an infant may hold a ministerial
 2567 office requiring only skill & diligence - but not
 1867 that office that requires discretion - & the reason is
 36 because we may create an office of skill & diligence
 1866 to depart - but in an office requiring discretion is
 36 of discretion an infant cannot act by itself.
 3666 If therefore an office cannot be executed by itself
 1863 317 it an infant cannot hold it an infant cannot
 1861 be an attorney - because he cannot be sworn - nor
 365 can he be a juror but because he cannot be sworn
 & because this is judicial office requiring the
 exercise of discretion & judgment. can it part may
 be an executor - but cannot act by itself as administrator

till seven years old. He is to tell the President
how by deputy or another called a commander in
chief. He is to be appointed by the Court of
Liberty. An infant acting in an official or
public is bound by his contracts. They are valid
and void nor voidable as he acts under the
law. He is to be a man. He is to be a man
and a woman. He is to be a man.

[illegible]

Parents & Child of Abolition give a right of recovery. But
120 if the infant alone in court cannot be recovered for
130 his estate as a resident would - because the statute
140 merely give a right of entry. As to Statute of Limitations
150 the rule is that the infant is bound to
160 make them unless there be annexed a special proviso
170 or promise. If the executor administrator or trustee
180 of an infant having power does not enforce
190 the right of the infant within the limited time
200 balance the infant rights shall by their neglect be barred &
210-220 the infant in case of the trustee must have an action
230 by assent of him.

240 As to the manner in which infants can sue or be sued - see in
250 Statute when they must sue or be sued by guardian
260 or guardian only, or by guardian & not by attorney.
270-280 for if he appears by attorney the law may be made to his
290-300 detriment. 310-320 the infant can bring an action
330 by guardian only. But by the Statute of Limitations &
340-350 the infant is now allowed to bring his action in some
360 cases by guardian only or next friend - First when the
370-380 infant is under age & is a minor - Secondly when suing a
390-400 single person or corporation will not appear in his behalf or
410-420 give his consent - when such consent is necessary
430-440 in order to conduct the suit - Thirdly when he has
450-460 no guardian - Fourthly when his guardian is illegitimate
470-480 or is only his next friend. If it be allowed - as in some cases
490-500 it is contended - that an infant can bring an action

Parent's Child - does not apply where the infant is a trustee
the guardian immediately assumes the trust - 1-40
Therefore the infant in such case is liable to the
trustee as if the gift prevailed in the first instance.

180 In Eng. the guardian must be admitted to the court
Kolt. 16 as a writ out of Chancery - The infant may come
1-41 to move an action but cannot appear to prosecute
504-702 the action except by guardian's appearance.
Whether the court did not expressly inquire into the child's
actual intentions in guardian's appearance and where
504 he brought an action for an infant. But since the
505 law of England & Wales in England & Wales where
Kolt. the mismanagement of the guardian's proceeds in
50-41 and the interests of the children were both the
court determined that the guardian's appearance and
505 should be regularly admitted. Any person even
72 a stranger may in the character of next friend bring
2 Pac. an action for an infant - & this even without the
580 infant's consent - for an infant is not by law in
3 Pac. law to be capable of knowing whether an action be
1485 brought or not - but the court - if he be not qualified
505-8 may refuse to allow him. Where an infant and
an adult are co-executors - if an action be brought by
505-8 then in that capacity - the infant may appear by
attorney the attorney of the adult - or if one appointed by the
505-8 court - but if they are merely joint executors the in-
fant must appear by guardian & not by attorney.

[illegible]

1200/1210 - But if an infant does bring a suit & all
1210/1220 the damages to be paid for him if that suit is recovered
1220/1230 - but if dismissed then it may be recovered by the law
1230/1240 though law of judgment be rendered against an infant
1240/1250 & he is an adult who were sued jointly the judgment is en-
1250/1260 forced against him in toto unless in the case of the specific dam-
1260/1270 nages are assessed severally. Here the judgment
1270/1280 is against the infant only in common law where he ap-
1280/1290 pears by attorney. But that case where an infant &
1290/1300 an adult are sued jointly - the judgment if against
1300/1310 them is only recoverable on the part of the infant &
1310/1320 the adult is then liable for the whole damages - for
1320/1330 each trespasser is always liable for the whole damages
1330/1340 but he or only a part ^{portion} at the election of the plaintiff - for in one
1340/1350 trespasser may then a notice assigned another for
1350/1360 portion of the damages recovered. - & in another case
1360/1370 an adult joins in suing a part - it may be recovered
1370/1380 as the part of the infant - & the law is the same in
1380/1390 cases that a joint contract of an adult & infant is
1390/1400 not binding upon the infant.

1400/1410 1410/1420 & how the law is in relation to the more
1420/1430 1430/1440 - as in the case of a joint contract of an adult & infant
1440/1450 ^{the plaintiff may = 572} - so that a notice is not
1450/1460 1460/1470 - as in the case of a joint contract of an adult & infant
1470/1480 1480/1490 - as in the case of a joint contract of an adult & infant
1490/1500 1500/1510 - as in the case of a joint contract of an adult & infant
1510/1520 1520/1530 - as in the case of a joint contract of an adult & infant
1530/1540 1540/1550 - as in the case of a joint contract of an adult & infant
1550/1560 1560/1570 - as in the case of a joint contract of an adult & infant
1570/1580 1580/1590 - as in the case of a joint contract of an adult & infant
1590/1600 1600/1610 - as in the case of a joint contract of an adult & infant

according to the circumstances of the will. ~~1791~~
 An unborn infant may take by descent - 1791-1811-1818
 vice. Formerly where the words in a will were, "He &c
 in the present tense they could not take by descent - 1811
 vice - but where the words used were in the future tense
 there tense it was always held that they could take by
 descent. And as no freehold can be created to commence
 in futuro the land so devised to the unborn
 infant will go to the heir presumptive till death
 the birth of the infant - An unborn infant & the 1791
 may be a coparcener or a sole heir. - By the abolition
 of distributions the infant unborn at the testator's
 death may be a partaker of the estate after
 distribution - & this too as the estate was at the death
 of the intestate - the heir being allowed the estate
 until death till such death. In case a man dies &c
 and bequeaths to pay to the heirs of another and &c &c
 distributed among each - he is as much bound to
 pay the unborn infant when born as if he had been
 the heir. 1791-1811-1818-1819-1820-1821-1822-1823-1824-1825
 An action of waste may be brought in, before the infant
 unborn child. An unborn child may be a sole & free
 executor but cannot act till of age. - Residue of
 estate being granted to some other person during the infancy
 of the child - so if his posthumous children be born
 from the mother or executor - a trust for them will
 1811-1812-1813-1814-1815-1816-1817-1818-1819-1820-1821-1822-1823-1824-1825-1826-1827-1828-1829-1830-1831-1832-1833-1834-1835-1836-1837-1838-1839-1840-1841-1842-1843-1844-1845-1846-1847-1848-1849-1850-1851-1852-1853-1854-1855-1856-1857-1858-1859-1860-1861-1862-1863-1864-1865-1866-1867-1868-1869-1870-1871-1872-1873-1874-1875-1876-1877-1878-1879-1880-1881-1882-1883-1884-1885-1886-1887-1888-1889-1890-1891-1892-1893-1894-1895-1896-1897-1898-1899-1900-1901-1902-1903-1904-1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915-1916-1917-1918-1919-1920-1921-1922-1923-1924-1925-1926-1927-1928-1929-1930-1931-1932-1933-1934-1935-1936-1937-1938-1939-1940-1941-1942-1943-1944-1945-1946-1947-1948-1949-1950-1951-1952-1953-1954-1955-1956-1957-1958-1959-1960-1961-1962-1963-1964-1965-1966-1967-1968-1969-1970-1971-1972-1973-1974-1975-1976-1977-1978-1979-1980-1981-1982-1983-1984-1985-1986-1987-1988-1989-1990-1991-1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-253

[illegible]

As the law now stands evidence of non access is relaxed 3 P.W. 275-6
 so a man being in circulation or in other places where access 5 W. 419-420
 for more than nine months before the birth be impossible. Cyp. 481 B. the 11
 will be good evidence. Other evidence may be admitted be-
 sides impotency and non access as by cohabitation of the 4 P.W. 356. Cyp. 484
 wife ~~with~~ with another man &c. Cowp. 594.

The issue of a marriage void ab initio is of course ille-
 gitimate - so also a canonical divorce a vinculo matrimonii 1 Bl. Com. 455-6-481-4
 renders the issue during coverture illegitimate but if there Inst. 255
 really with some canonical impediment during coverture 1 Coke 41.
 and no divorce be had during the life of the husband & wife
 the issue cannot be bastards after the death of either
 parent. For the legality of a marriage not absolutely void ab initio 1 Bl. Com. 446
 cannot be called in question until during the lives of both
 parties. In case of a divorce a mensa & thoro the issue after 12 R.
 2^d divorce is presumed to be illegitimate but in case of Tack. 42-43 925
 voluntary separation it is presumed the issue is legitimate. 1 Bl. Com. 458
 The presumption in both these cases may be rebutted. 4 S. R. 556
 The wife may not be admitted as evidence to prove the im- 1 Cowp. 594
 possibility of access on account of decency, morality & policy But. S. R.
 but in the case of incontinency the wife may give evidence 1 Wils. 340
 concerning the issue. quon. 2.

The husband or wife may testify of the birth or marriage of Cowp. 594
 & infant - even hearsay evidence may in this case be admitted
 as if a parent now dead was heard to say before his death Cowp. 591-592
 when the birth or marriage was - but if they are alive this kind of evidence will not do.

The birth, marriage, death and pedigree may be proved by the parents - and the birth and death by baptism tomb-stone and Family record.

1 Bl. com. 454-6 If a child be born before marriage it is illegitimate
 Enjam 541 Issue born so long after the husband's death that it was not
 Exp. 2. 485- George possible for the husband to have begotten is illegitimate
 Co. Litt. 123 & 182 notes The law is not exact as to a few days nine solar months being
 Palm. 9. 1 Inst 8 the max time and if the child be born within this time it
 1 Bla. 31 and 1 Bl. com. 456 is legitimate by presumption. If it so be that the mother was
 Enjam 541-548 & 2114 or so soon after the death of her husband that it is difficult to
 1 Bl. com. 456-1 Inst 8 designate which is the true parent the issue may choose
 1 Bla. 312. Salk 110 which he pleases. The parties in action may be a son born
 6 Dec. 410-1 Inst 244 before marriage and one born afterwards. If the bastard dies
 1 Bla. 56-1 Inst 324 sicut of the inheritance his issue will take it to the exclu-
 6 Dec. 410-1 Bla. 316 sion of the legitimate brother - but the possession must have
 been peaceable and ^{int}undisturbed.

The rights and incapacities of illegitimate children.

1 Bl. com. 258 All rights of possession must be acquired because being
 5 Mod 168-2 Inst 88 nullius filius the son of nobody he cannot inherit an
 Lomb 565 estate. There is said to be of him to nobody but his own issue
 Enjam Rep. 2 he cannot however marry ^{when living} without the consent of the mother
 13 Rep. 90-100 or his father (if he be ascertained) nor can he marry change
 of his relations which are forbidden by the common & civil law.
 2 Ld. Ray. 158 The maxim therefore of nullius filius or filius populi applies
 1 L. Rep. 101 to inheritance only and would be properly only nullius habes
 et an illegitimate son can derive no settlement from the father.

because a settlement is of the nature of inheritance. *Inst 3*
 He has no surname unless by reputation, seeing he cannot *1 Bl. com. 459*
 inherit his father's name any more than his property *Rev. de. 19-25*
 and some length of time is necessary to acquire a name *1 Inst. 2. 1 Br. 309*
 he may purchase a surname or by A the son of *Perk. 4. 26*
 such a one, specifying the name, but he cannot purchase by *Co. l. 5. Rev. 358*
 office as when estate is devised or bargained to the issue of A & 10th 410. *1 Inst. 3^d*
 Even if a contingent remainder be limited to the heirs or children *5 Co. Inst. 358*
 children legitimate, and illegitimate, an illegitimate cannot *Co. l. 5. 1 Br. 31*
 take, or rather if a contingent remainder be limited to the *2 Rev. 1 Br. 529. 1 Br. 309*
 son leg. & illeg. it is not good both on account of the uncertainty
 & the father and the indefinite share the law ~~dicts~~ is ~~not~~
 but if a cont. rem. be limited to the eldest son of ~~any~~
 leg. or illeg. it has been held by some that it will be good there *1 Br. 309. 1 Br. 350*
 being no uncertainty as to the mother others have held the *2 Bl. com. 170* - rather
 matter undecided and in the opinion of Mr Goodell the *4 Co. 1 Br. 529*
 potentia remotissima place, the ^{mother} ~~father~~ in the same situation *1 Inst. 3^d* not
 in this respect as the father. An illegitimate can have no
 heirs except of his own body because being in law nullius filius *Inst 3^d*
 he can have no collateral relations. The settlement of *1 Bl. com. 459*
 an illegitimate is in the parish where he is born - he can *3 Co. 25. 4th 427*
 derive no settlement from his parents but may acquire as
 any other person does. The illegitimate belongs to the parish
 where it is born altho the mother's settlement be in another *Donag. 7*
 except where fraud is practised as if she be forced into another *4th 121*
 parish or by any other means goes into another for the sole *1 Br. 45*

Illegitimatus purposed bringing the charge of support upon it
 duties to the parish from which she went is compellable to support
 it in case it cannot be maintained by the parents. If the
 mother goes into another parish to beg and a child is born there
 the child must be supported where it is born unless the
 mother be actually apprehended for her vagrancy in which
 case the parish from which she went is bound to support the
 child. In Connecticut the mother's settlement is the place
 of the child. It has been decided in two instances in this State
 that the mother cannot inherit from her illegitimate child
 and by this it is evident that the illegitimate child cannot
 inherit from its mother.

Duty of parents towards their illegitimate children

It is a natural duty of father and mother to maintain
 their illegitimate children but if they are not able the
 town or parish must. The mother can have no action
 against the father for the maintenance of the child
 but by petition or an order of the county court founded
 upon the oath of the mother whose veracity and chastity are
 not impeachable the father may be compelled to pay dam-
 ages which are generally enough for the support of the
 child 4 years - and if required for a longer term
 The mother may make oath before a justice of the peace
 either before or after the birth of the child, the magistrate is
 then to issue a warrant to apprehend the father who if
 sufficient reason exist may be bound over to the next

county court. But if the child be not born before the rising of the court he is to be recognized in a bond to appear at the next succeeding session because no final judgment can be had until the birth of the child. The process is a criminal one or a forcible process therefore the ^{mother} woman may be admitted as a witness her testimony being liable to be set aside the same as ^{that} of any witness - but the object is purely civil it being the same as that of debt. It has been suggested necessary by some that the child be sworn before birth by which means a part of the power of an evil designing ^{woman} mother may be taken away but it has been determined that it is not necessary to make oath before birth if a declaration of the ^{mother} father be made at the birth or travail and afterwards confirmed by an oath as before. When the town prosecute a subsequent oath merely is necessary. The mother must be constant in her accusations that is she cannot accuse but one for if she accuse one out of court and another in court the action is lost. The father being convicted is to find surety for the payment of damages assessed or stand committed till he find surety. Execution may issue quarterly for the part of the whole damages but the execution may be stayed if the child die before the 4 years are up. In case the necessary expenses greatly exceed the damages assessed on application to the court additional damages will be assessed. No action can be had against the mother for the neglect of the illegitimate for reasons sufficiently evident.

Parent & ³⁷
Child

1 Wyl. 209-10-11

1 Day's Comm. 208
For sufficient read in suff.
in the last author.

15 J. Rep. 275

Stat. 26

Illegitimacy If the mother of an illegitimate child dies or marries before the birth of a child or suffers an abortion the defendant (or father) is discharged excepting that in case the child can be proved to be

1 Bl. Com. 458

illegitimate as the law now stands the father may be subjected altho the mother ^{may have been} married before the birth to another man

Walton v. Gifford & Chappell
1790

It is held by Swift that if the mother be married ^{after} before the birth of the illegitimate child the husband cannot join in an action against the father but there does not appear to be sufficient reasons attached to this rule to establish it.

1 Swift 211

The bond taken by the magistrate is void on the appearance of the defendant in court and surety for damages assessed

Kirby 267

The bail bond is discharged in one year after the last execution

Mat. Com. 55

is issued. By our law the mother may prosecute but if she

Day v. Geo. Com. 278

neglect to prosecute the selectmen of town may in which case the mother may be compelled to discover the father notwithstanding what Swift says on the subject. ^{to the contrary} 1 vol. 11.

The town is liable to support the child provided the parents are not able. The father when committed for bail cannot take the poor man's oath when the town are the prosecutors.

If the mother commence a suit and leave it the town may pursue it. — What the mother has sworn before a Magistrate may be given in evidence by any who were witnesses of her oath after her death — and it is a universal rule that

5 J. Rep. 373

evidence taken by a proper magistrate is admissible at any time in the same cause and between the same parties. In one month after the birth she may be called upon to give evidence

39

The mother is compellable to answer questions in relation Douglas Cr. 278
to her criminal connection with other men — Trials of 1 Swift 11-12
this kind are generally decided by the judges but sometimes 1 Bl. Com. 458
by the jury. It has been a question whether or not depositions
are admissible in cases of this kind being partly criminal & 1 Swift 211
partly civil. in all civil cases they are admissible but in crim-
inal not — but it is now decided that depositions are admissible
In prosecutions by the town no appeal lies to the Sup. Court

Rights and Duties of parents in relation to their
legitimate children — and the children in relation to their 1 Bl. Com. 446
parents. These are three viz 1 Maintenance & protection.
2 Education. Maintenance consists in providing ne- 1 Bayley 345-346
cessaries. Parents are bound to support their children when 1 Bl. Com. 449
they are not able to support themselves ^{such} as minors and in- 1 Brunchen 268-58
firm adults. and all legitimate children are bound to sup- Stat. Com. 232
port their parents and grand parents in their infirmity ^{Children and Widows}
Hearg. 190
If there are no relations the town must provide for their support 2 Baily 345-346
If a man marry a woman that has children by a former Stat. 245-242
husband he is not under obligations to support those children 2 Lloy. 1464-5 and
unless she was able at her marriage. Nor is a man under 2 Baily 346
obligations to support his wife's parents. If a man die without issue 140-943-438, 119
leaving an estate the estate in whose hands ever it 1 Bl. 448-449
it shall be shall be chargeable with the support of the wid- Stat 155-361
dow (if a widow be left) as long as she remains widow. Stat. Com. 234
The duty of the parent to support his children may be enforced 1 Root 60
by a memorial to the County Court and order issued thereupon 2 So 168

Stat. 255. This memorial may be presented by the relations or the
 select men of the town - An action ^{at law} will not lie against the
 parent for the support of paupers or adults but for the sup-
 port of minors an action at law will lie. So on the other
 hand in case of the infirmity of the parent by which he
 is unable to support himself a memorial being presented
 all the relations are to be cited before the court and the expense
 of support is to be apportioned according to their respective
 abilities to pay and not according to their quota of the family
 estate - Security is to be given to abide by the orders of the court
 and if not given quarterly executions are issued in the
 name of the memorialist.

Protection is a natural duty of the parent, and may rather
 be called a privilege than a duty because the parent is not
 compelled to protect his children any more than a stranger.
 He is permitted rather than enjoined to protect his children.
 Thus in this instance what is duty by natural law is
 privilege by municipal law.

2 Sept 564. The parent may assault and countermand and
 support his children in lawsuits and may defend them
 from assault and battery and use the same means of defence
 as would be lawful for them to use were they able to defend
 themselves all this may be justified in a parent in behalf of
 his children when a stranger doing the same acts would
 be liable to an action and penalty recovered against him
 19. Conn. 456-7 A third person may interfere and part too that are quarrelling

But unless he act as a disinterested person he is liable
to action and penalty. — In the same manner
children may sue their parents.

Parent. 8 321

Child

Parents are bound to give their children a suitable education. In Conn. all parents and masters are bound to give them such an education that they may be able to read the English language and to know the crimes to which capital punishments are annexed and if the Parents are able they are to be instructed in some orthodox catechism. The select-men may bind out paupers (who have no other means of support) male till 21 and female till 18 years old. It is the duty of children to obey their parents and from what has been said to support & protect them.

The rights and powers of parents.

Parents may correct their minor children provided it be not excessively unreasonable — and his right herein arises from his duty to keep good order and discipline in his family — to which effectually a kind of discretionary control is naturally vested in the parent. But if the parent is influenced by malice or is unreasonable in the severity of punishment an action of battery may lie against the parent by the child. a slight transgression will not be taken notice of unless the father may withhold his consent to the marriage of his minor children without which consent in England the marriage is void and the issue illegitimate but in Connecticut

- Rights* the marriage is not void nor voidable on that account
Stat. con. 280 but subjects the officiating minister to a fine
 The father has the control over the minor child in the
 character of trustee or guardian and liable in the same
Wheeler 452 manner to render an account when the minor comes
 of age. A minor is entitled to all the property he ac-
 quires otherwise than by his services - as if a letter had
 been given him and he drew a prize it is his exclusively.
1 Stat. con. 453 or a father makes a present to him whatever he earns it is
 his. but if he be, permitted to labour for another the parent
 may receive the pay. The father may have an action
of det. 115 against any one who injures his child or entices them
Ch. c. 645 away so that his service is lost. ^{on child's father's} But without loss of service
Peck. sup 255 the child must maintain his own action or his parent
In T. May 259 as guardian for him - The parent may recover for expense
of cure if he allege this is special ground of damage.
Ch. c. 453 & 454 So a parent or guardian may have an action against
Thorp 168 & 169 the seducer of his daughter or wife grounded on a presumed
loss of service but the amount of damages must be grounded
2 Hect 320 not only on the loss of service but on the disgrace of sunk
3 Wilson 18-19 and character - so evidence in support of chastity may go
May 259 to raise the amount of damages, while evidence to the
Peck 241 contrary may depress even to nominal damages.
Peck 55-255 If the seducer lived in the family with her father she is pre-
 sumed to be service to her parent but if she be an adult and
 live out of the family it may be necessary to prove service.

It has been asserted by a respectable writer though without Exp. 645
any foundation that the daughter must be in her father's family
at the time of the seduction. The age of the daughter is 2 S. Rep. 10
not material if she be a servant de facto - and if she be 5 Wilm. 15
under 21 she is presumed to be a servant unless she be in Barr. 1875
another family labouring for nothing or receiving her wages 2 S. Rep. 4
herself. An action for damages may be maintained by Peas. 55
any person standing in the place of parent.

When a suit of this kind is brought by the father the daughter 3 Wils. 18
is a competent witness she having no interest in the 1 Wils. 472
event. In Eng. the action is most frequently brought as trespass 1 S. Rep. 107
or assault, but as the action is liable to be defeated by the L. R. P. 12. 9. 1.
defendants proving permission to enter the house it is a bet 5 S. Rep. 561. 6 Wils. 553
ter way to bring an action of trespass on the case for assault S. Rep. 1032
not then come into the question whether the entrance was 1 Wils. 201 - 642
legal or not. In the case of trespass or assault the action is 2 S. Rep. 167-8
grounded on the illegal entrance of the house and ~~the~~ 1 Wils. 555
the act of seduction whether followed with pregnancy or not 3 Wils. 13
acts in aggravation of damages - but if the action fails no 6 Wils. 478-1
damages can be asked - but damages being consequential 2 S. Rep. 166
to the act it is properly an action on the case. It is said by 8 Wils. 146
Swift that every unlawful act implies force and that the 1 Wils. 190
decision of the court in the case of Mott is ~~affirmed~~ was improp- 1 S. Rep. 12
riously and erroneously in requiring proof of force in entry 2 Wils. 1213
but it is believed that the principles laid down by Swift are 2 Wils. 64
themselves erroneous and the decisions of the court go

Seduction
of Children

S.B. Com. 130

Bro. Com. 770

L.R. 5. 190-260

8 L.R. 38^e

1 Bl. Com 453

When the permission to enter one's house is voluntary on the part of the owner an action on the case only will lie but where the law gives permission as in ^{many} instances it does if unlawful acts be done in the house an action of trespass ^{with} arms and the act is considered unlawful from the beginning, ab initio. It has been doubted whether an action will lie without alleging actual loss of service but it seems to be the ^{prevailing} opinion now that an action will lie. The parent has a right to the custody of his children at all times ^{on the case} except ^{h. b.} under a guardianship and also to the service unless the service be actually alienated in which case the parent may bring his action for seduction although no loss of service can be alleged by the parent and this because the daughter is in his custody. This custody is necessary in order that he may perform his duty - so that the right of custody and right of service are two distinct rights the one that of a parent the other that of a master. The personal authority of the father ceases the day preceding 21 anniversary of one's birth day. The mother as such has no authority of her own over the children during the coverture but is supposed in law to act in this capacity by consent of her husband yet she must de facto have authority and control over her children when infants.

How far the parent is liable by the ~~unlawful~~ acts of his children. The father is liable for the torts committed by his ^{minor} children to the same extent as the master for

the acts of his servants. Therefore a parent is not
 liable for the acts of his son when his son is under another
 master. 2^d A parent is not liable for the contracts of his
 children otherwise than as master for those of his servants
 except in case of necessities. A master is not liable for
 the servants' contracts of necessities unless it be specified. Statutes is taken
 in the indenture that the master furnish necessities
 3^d There are certain fines which the parent is liable to pay. Statute 22
 and the master act. - By our law if a minor make 50s - 5th -
 a contract with consent ^{of himself} of Parents or guardian he 29
 is void.

The rights and duties of guardians

A guardian is a temporary parent or a person in loco parentis during minority of a child. In England
 the guardian has the charge of both person and estate
 of the ward - but it may be that one guardian may have
 the charge of the person and another may have the
 charge of the estate. In the Roman law the former
 was called Tutor and the latter Curator. There are a
 variety of guardians spoken of in the books as first
 Guardianship in chivalry when an estate is held
 by Knight service. &c which is not known in this country
 Guardianship by nature - as father, mother or other
 ancestor in case that be not living - Priority always older - 3 Com. 415
 naming the right of guardianship. Guardianship by next of kin
 extends only to the next apparent of the ancestor

- Guardian* It has been said therefore that the guardian by nature
 18th. 33⁶ had the control over the minor person and not his
 18th. 38⁶ property and that he is not guardian by nature over
 18th. 84⁶ - 85⁶ any of the children but the eldest son.
 18th. 88-9 n. 14 In Gen. all children are heirs apparent of their parents
 18th. 114-115-116 and therefore their persons and estates are under the
 18th. 117-118 control of their parents during minority - Even in
 18th. 119-120 England the parents are still natural guardians of all
 18th. 121-122 their children - this by natural law - not by common law.
 18th. 123-124 3 Guardianship in socage is where an infant under 14 yrs
 18th. 125-126 is seized of lands held by socage tenure - The guardian
 18th. 127-128 shall be the next of kin to whom the inheritance cannot
 18th. 129-130 possibly descend - no difference between whole blood & half
 18th. 131-132 blood. Guardian in socage may enjoy the estate of the ward
 18th. 133-134 & R. 12-13-14 till he be 14 yrs old - may maintain an action of ejectment &c.
 18th. 135-136 89 n. 15. The gift of Guardian in soc. not assignable i. e. fiduciary
 18th. 137-138 18th. 139-140 88 n. 11-89 n. 12 being not for the benefit of the Guardian but of the ward
 18th. 141-142 18th. 143-144 When the ward comes to 14 yrs he may enter and oust the
 18th. 145-146 18th. 147-148 guardian.
 18th. 149-150 4 Guardianship for nurture is where there is no guardian
 18th. 151-152 in socage, to the preachers, rules terminates at 14 years
 18th. 153-154 18th. 155-156 88 n. 12 - extends to children not heirs apparent - does their persons
 18th. 157-158 89 n. 15 and not over their estates - the father and mother only are
 18th. 159-160 capable of being guardians if they be living - Guardianship
 18th. 161-162 for nurture not known in Connecticut for the children
 18th. 163-164 are all heirs apparent

a parent may appoint guardians for all his children 1 Bl. Com. 462
 by will or by deed if he is of sufficient age to make a will 1 Inst. 89^m 15
 or deed - a deed in this is of the same nature as a will 1 C. M. 733
 except in external form - he may appoint one guardian & 2 Ric. 100
 dian for any certain period and another to succeed him 2 Willes 129
 as a guardian in remainder - the guardianship extends 2 Ch. 14
 to person and estate - this is according to the Statute of 12th & 13th Henry 204
 Charter II but in Connecticut there is no such statute 1 Inst. 89^m 148 16
 The guardian himself cannot appoint one to succeed him 2 Bac. 475
 There are also guardians by custom & guardian by election 1 Inst. 87^b 89^m 16
 the latter will take place when no guardian is appointed 1 Fam. 355-1 Inst. 87
 by law or the appointment of the father - the child may 89^m 16
 make the election and have it confirmed before a judge in 1 Bl. Com. 463-493
 a circuit - the age for choosing guardian is 14 in both sexes 1 Inst. 89^m 16
 but there have been instances where a child has chosen 2 Bac. 479-1 Inst. 87
 guardians under that age 8th Co. 14-9th Co. 116
 The court of chancery in Connecticut has no power 1 Key 160: 14th Co. 170
 to remove a guardian. In England guardians have sometimes
 been appointed by the Ecclesiastical courts - but the
 right of appointing guardian over the person of the 1 Inst. 151-152^{ase}
 word has always been denied them and lately of
 appointing one over the estate. Now Ecclesiastical 1 Inst. 89^m 16-155^b
 courts have no power to appoint guardians except guardians & 60^b 55^t
 children who can be guardian only for one particular suit - 3 Bl. Com. 427
 must be summoned to appear for the infant. In Connecticut
 the court once appointed guardian is taken over an

1890-10

Guardian

Ward

Stat 151-2

2 to 20

Stat. 227, 458

Stat. 428

Stat 454-24

Stat. 458-27

infant female of 18 inferior for arseing. There are in this State 3 kinds of guardians viz Natural guardian Guardian appointed by the court of probate and guardian ad litem. So that guardian by chivalry - guardian for mother guardian in charge - guardian by will and testamentary guardian are unknown in this state - children are all under age - the father natural guardian to all his children till 21 years old and his guardianship extends to both person and property. It appears by Stat that the mother is natural guardian over the females till they are of sufficient age to choose guardian. But by the Statute the mother may be and by the practice of probate has frequently been appointed guardian over male and female children. And even while the mother is living the court may appoint the mother or not at discretion. It seems by this that the mother is not of course natural guardian. But while the father is living no other person can be appointed guardian unless he be removed and he cannot be removed without special reasons. When the infant is of sufficient age to make choice on application to the court he is to be summoned to appear and make choice which may be confirmed by the court of probate or not at discretion. But on application the court may appoint a guardian the infant not being summoned if the infant male or female be not of sufficient age to choose guardian. It is not true strictly that the ward must live with and receive

be removed from the guardian for the guardianship of person 1 Root 131-2
 may be vested in one man and that of property or estate in 2 & 320
 another. When a guardian is appointed over an infant
 under 14 he continues guardian till the infant be 21 yrs. Hist. 252-286-7
 of age unless the infant when of sufficient age to choose
 makes choice of another to the acceptance of the court.
 The court is to take security and in case the ward holds an
 estate with a duty of the guardian for the faithful dis-
 charge of his duty the conditions being that the guard. 1 Root 51-2
 -ian shall account with the ward when he comes of age 1 Inst 89-n.9
 or sooner if required by the court. In England remedy 1 Blom 463-2 Inst 7
 against the guardian is had by bill in chancery - the Guard. 2 Comyn 231
 may be called to account annually &c. 2 Inst 178-2 Inst 678
 In Connecticut remedy is had by action of account. Stat. 56-1 Pl. 703
 A guardian except the natural one is obliged to support 1 Rev. 100-1 Pl. 14
 the ward at his own expense - if widow having infant 1 Rev. 100-1 Pl. 14
 children marries she may apply their property if any 2 Inst 177-54399
 they have to their support for she cannot apply her own 1 Rev. 100-1 Pl. 14
 being under coverture. A guardian may in the charac- 1 Rev. 100-1 Pl. 14
 ter of parent supply more of his ward's estate to his 22 Vent. 268
 up than what is absolutely necessary or ordinary - as
 supporting him at college and the like provided the wards
 estate be adequate - but the parent cannot apply his sons
 estate in this way unless when the sons estate is adequate and
 the Father be unable on account of indigence it being in
 power of the court of Chancery or Probate to determine the expediency.

Duplex & By the statute of Connecticut the guardian must in case a
 Stat. 159 mortgage deed be taken by an infant deliver up the mortgage
 3 Burr 1794 deed on its being redeemed by the mortgager - and thus the
 154 Rep. 595 guardian *ad litem* may do by the instructions of the court
 Stat. 258 Also the guardian of a joint tenant ~~or~~ the joint tenant
 3 Burr. 1808 himself is compellable to make partition of estates.
 2 Bac. 684-685, 6 If the ward's creditor accepts a less sum than is due to him
 2 Com. 230. by the ward whether by means of the guardian's solicitations
 2 Chan. 60 245 or not the guardian shall not apply the surplus remain-
 2 Bac. 687 ing in his hands to his own emolument but it shall go to
 the ward. When money is put into the hands of the guard-
 ian it is expected that the guardian will in accounting with
 the infant pay interest for the money unless he can
 show that it could not be loaned with safety but if so
 2 Vesey 629 money be employed in trade without the direction of
 the court or infant. The ward in accounting with the guardian
 may at his election take the profits of the trade or interest
 1 Vern. 436-7 of the money. So also where the money is laid out in land
 the ward may choose the land or the money with its interest
 1 Vern. 403-435 In case the ward dies it is not in the power of his executor
 2 Com. 451 to elect but must for personal property receive personal
 1044 489-1 Vern 456 property. In chancery the guardian is considered trustee
 2 Bac 687 of the ward's estate but in courts of law he is considered
 1 Ex. 684-280 bailiff. Yet in courts of common law if a guardian com-
 mits or suffers any other person to commit unlawful acts
 on his ward's estate he shall be accountable as trustee

351

The guardian is not at liberty to pay the ward's debts out of his own property when the ward has personal estate unless he be empowered so to do by the court. and the court have undoubtedly a right to vest this power in the guardian when the ward's personal estate is in good standing - i.e. when the profits of it are more than the interest of money. By the prerogative 2 Com. d. 231
personal estate & money it will make no difference whether that or the guardian's money be applied. thus if the ward have on his farm a surplus of stock the guardian cannot keep them there and receive interest for money laid ^{out} by himself from his own estate for the payment of the ward's debts. Salk. Cas. 58

In the marriage of the ward the court of chancery exercises a great power - it may prohibit marriage where the guardian's consent is not given and even where it is given and all that are concerned in the performance of marriage under such prohibition are punishable for contempt
There are no decisions to prove that ^{while the} parents are living and are not guardians the chancellor may forbid the marriage of a son while the parents actually consent but it is presumable the court may prohibit them in certain circumstances. In some the practice of binding out wards is not sanctioned by law but by constant usage

It is laid down by Hardwick in one place that the guardianship of females and not of males ~~terminates~~ terminates by marriage and in another place it seems to be contradicted. Where a ward female marries an adult or even where she mar-

Settlements

marries an infant it is scannable to conclude that the guardianship of person and estate ceases in the female, but the guardianship continues over the male as to his person and property and as to the person and property of the wife - The husband may contract for necessities not only for himself but for his family.

1 May 91-160

Settlements of children.

1st Inhabitants not of this or any of the United States cannot acquire settlements in this state unless by vote of the town by the select men and civil authority or by virtue of an office in a town held by appointment.

Stat. 239

2 Inhabitants of other states of the Union can gain no settlement in this state unless by one of the preceding means or the possession of a real estate in fee of the value of \$334 & 1/2

3 Inhabitants of this state may not have settlements in any other town in the state unless by some one of the three first qualifications - by the possession of an estate in fee of 100 \$ or six years residence in the town without

Stat 240

1 B. Com 562

charge of maintenance upon the town.

Carth 455

Comb. 364

2 Settlements may be acquired by birth and the birth place is considered his place of residence unless proved to the contrary. If neither father nor mother have a settlement

Stat. 425-42 May 367

1 Pol. Com. 362-3

his birth place is presumed to be the place of his settlement in this state if extended to children both legitimate and illegitimate but in England only to illegitimate conclusively this presumption may in this state be rebutted both as

to legitimate and illegitimate children but in England *Children*
only as to legitimate children - every presumption not *Salk. 528. L. 1473*
notwithstanding is conclusive - When it is known that the leg. *Burdett v. 51-2*
parents are settled in another town. Settlements in the *Widby 202*
aforesaid way are called derivative settlements. *1 B. Comm. 502-3*

The settlement of the minor follows that of his father *v. c. 5 T. Rep. 116. 438*
if a parent moves his settlement the minor moves *- 53 L. Burdett 49-64*
with it and after the death of the father the settlement *55 L. 479*
follows the mother but if the mother marries and moves *Burdett v. 49-64. 445*
into another town the minor's settlement does not follow *Salk. 528-470*
her, for her husband is not bound to support her child - *3 Salk. 459*
her children under seven years of age may go with her *11 Mod. 87*
for nurture. In this state a ward gains no settlement
by living with his guardian notwithstanding what has *1 Root 131-2*
been said concerning 6 years residence. *1 Kilm. 368*
A settlement is lost ipso facto upon the acquisition of *brother 570*
marriage and in no other way can a settlement be lost. *528-9*
lost - An infant in England may gain a settlement *L. Ray 567*
by commorancy (i.e. apprenticeship) by which means his *3 T. Rep. 116-356*
derivative settlement is lost - He by this becomes *1 Root 132. L. 458*
emancipated and is no longer under the control of *551-5 T. Rep. 479*
his parents - and cannot take the benefit of a new *Burdett v. 49-64. 558-806*
settlement of the father - even tho he live in the family *5 T. Rep. 583-64. 4526*
with father.

How a minor may be emancipated.

A minor is emancipated when he attains full age. but *Winn. 785*

Emancipa^{tion} not of course for as long as he continues to serve in the
6th. 152 family he is not emancipated - but he may at any
age be emancipated if he pleases -

11th. 458-459 2^d He may be emancipated by marriage for then the
natural guardianship of person ceases.

8th. 526 3^d He may be emancipated by gaining a settlement
11th. Pub. 1000 of his own.
= 11th. 552

11th. 552 4th He may be emancipated by contracting any relation
6th. 1154-556 which is inconsistent with the idea of his being in a
11th. 612-6th. 247 subordinate situation in his father's family as by e.
8th. 479 - falling into the army &c. -

11th. 612 3^d A settlement may be acquired by marriage - The
Br. A. 122 (book) husband's settlement is that of the wife's - but if the
570-11th. 528-9 husband hath no settlement or is a foreigner ^{or is dead} - the wife
11th. 544-683 settlement is suspended during his stay in England
11th. 232 and his ability to maintain her. In this case if the
husband has no settlement or does not remain in
Br. 11th. 367 - the relation or does not live with and support his
570-573 - wife - the settlement of the wife is not lost - it con-
tinues in favour of herself and children.

Sherriff - to do with - Justice & Bailiffs

The Sheriff is a person who is appointed by the King to do the law in a county. He is a man of high rank and is the chief officer of the county. He is responsible for the execution of the law and for the maintenance of the peace. He is also responsible for the collection of the taxes and for the management of the county's affairs. He is a very important person in the county and is respected by all the people.

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[illegible]

[illegible]

thought a representation of the people in which the true character is entirely an essential aspect. —

[illegible]

[illegible]

Sheriff - if the person is attached to the officer. 4 Bac
 456 - 1 Hall. 158 - 2 Id. 54 - 6 Id. 173. And if a person
 is illegally arrested by the breaking of an entrance
 813 is detained while in custody, and another person
 814 the last arrested is good if there is no collision in the
 805 between the parties - or officers in the two cases.
 4 Bac 125 Stat. 20 Car. 2 & by our Stat. no civil process may
 256 be served on Sunday - the service is void - & the
 815 officer is guilty of false imprisonment. 12 Bac 158 &
 4 Bac 159 where a prisoner escapes - he may be taken on
 256 Sunday - for this is more the manner of execution
 816 the officer is guilty. 41 - In the matter of *W. H. H.*
 144 120 - 6 Hall. 95 - 258 - 2 Bac. 245 - 2 Id. Aug. 1028.

817 If a person is arrested on Sunday the court
 818 will discharge the prisoner on motion. 2 Bac. 456

Escape - An escape is where a person being
 2 Bac under lawful arrest - & restraint of his liberty
 819 either violently or privately escapes such restraint
 820 or is suffered to go at large before he is delivered by
 821 due course of law. An essential element of an escape
 822 is that there be a provision legal arrest. For the
 823 reason of an illegal arrest is voidable. 1 Bac. 45
 2 Bac 456 to 458 - The arrest must be made in pursu-
 824 ance of lawful authority - see if it is void - Then
 825 again this may sometimes exist without a lawful arrest
 826 where the arrest is made by virtue of a writ, or
 827 process - the law does not in that case require a lawful

[illegible]

Escapes - surrendered before return of execution - occur
 it would without competent authority - as a
 private person - or a turnstile & such others
 as private persons - In action for 1808, where a
 single magistrate - Longworth released the prisoner
 and here as in the.

1808 & 1809. Law an officer having made an arrest on
 final process cannot delegate to a stranger a
 right to hold the prisoner in his own absence
 - 1809. Law. Is not the practice in law contrary?
 1809. An arrest must be actually & regularly made
 1809. before can be made. There would not
 1809. make an arrest - there must be an actual touch-
 1809. ing of the body - or what is tantamount to a touch-
 1809. of immediate possession of the person & such is in
 1809. fact - with the officer merely says "I arrest you"
 1809. & the party runs away from him - this is no arrest and
 1809. therefore no release - because of the fact that and
 1809. mistake that the officer did not lay his hand upon
 1809. him. If one is arrested at the suit of a creditor
 1809. he is in custody - a writ in the hands of a creditor is
 1809. delivery to the officer. The debt is in custody in
 1809. fact of law if no facts in custody in the second writ.
 1809. & of course it is supposed to put large the officer in
 1809. fault of an error - in law, where the writ
 1809. was as well as the property of the prisoner - for the
 1809. full more strict & take the law as it is. Do not take per. 1809.

Except we will be kept in without any ^{with the same}
 there is no ^{with the same}
 23. and Voluntary ^{with the same}
 make will be a ^{with the same}
 24. of an escape - ^{with the same}
 25. in the ^{with the same}
 26. of a ^{with the same}
 27. of a ^{with the same}
 28. of a ^{with the same}
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 99. of a ^{with the same}
 100. of a ^{with the same}

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it is important to state & when Sheriff & Granger
there in the discussion - I should come out in a true
the replication in answer to my address as was - 28
discrepancy. For a voluntary escape the minor
de: client - or said in name - for incidents 203
the court one. & then the 1st of the order in 203
after - the court seems correct. After all I
brought up the one - & are case - & here I am & look
hundred - the original judgment is correct - the 1st
show - was that and the record - but after the case
justly execution of the 1st - the original was 203
in record - the judgment of the court - that a horse
said. (And one to make reference to again. ^{of the money} 203
In the court - make a false return case the 203
of case in name - the 203 is agreed - as re. 1st
then I notice on the 203 - the court in 203
203 - was one case - and in the 1st case
one - in the 203 - the return - as a case - 203
of the false return - now - as in 203 - but was
one. 203 - 203 - 203 - 203

In court is a primary case - the the court in 203
of the court - the court in 203 - 203
for the 203 in the 203 of the court - 203
to the court in 203 - the court in 203 - 203
of the court in 203 - 203 - 203
203 in 203 - 203 - 203 - 203
In general however the liability of the court in 203

1842. The nominal - April 10. In the
 1843 debt is ²²reducible - the creditor upon no
 1844 actual info. to the court & then he can recover
 1845 as much nominal damages - but the court
 1846-47 is not satisfied - only in the special case
 1847-48 as to actual damages. However the person
 1849 escaping is a liability at the time of the escape &
 1850 he means to the escape - is enabled to ride the al-
 1851 ready - the court & those would be reported
 1852 for the whole debt. In these cases it is for
 1853 the insufficiency of the party - the sheriff would be
 1854 also liable - if the escape were facilitated by an
 1855 actual negligence in him & the sheriff
 1856 - but if a creditor voluntarily discharges a debtor
 1857 a debt - taken in execution of a writ committed
 1858 is not - he can never afterwards charge him
 1859 in any way except the debt - it is a discharge
 1860 of the debt - the debtor in execution being deemed a
 1861 satisfaction. 12th 55 - 12th 55 - 12th 82. - and then
 1862 the discharge was in consideration of a new
 1863 promise to the debt & pay - the promise is broken
 1864 the rule is the same - he cannot be taken
 1865 over in debt on the first - but on the new promise
 1866 he may - 12th 55 - 12th 83. And the judgment
 1867 is satisfied over the new agreement - and he is
 1868 then & decided - in information. 12th 85
 1869 unless it is a good consideration for the new promise.

execution of a person once taken. Then if a person
in execution & released by the pit in said. it is
said that the latter are taken in execution a release
release of one by the pit in a release of the
a release of one by the pit in a release of the
a release of one by the pit in a release of the
a release of one by the pit in a release of the

But since the law merchant the release of a
bill or after having taken one involved in ex-
ecution & discharged him from further with a
release of one by the pit in a release of the
a release of one by the pit in a release of the
a release of one by the pit in a release of the

It was formerly decided that a release of a
bill or after having taken one involved in ex-
ecution & discharged him from further with a
release of one by the pit in a release of the
a release of one by the pit in a release of the
a release of one by the pit in a release of the

But since the law merchant the release of a
bill or after having taken one involved in ex-
ecution & discharged him from further with a
release of one by the pit in a release of the
a release of one by the pit in a release of the
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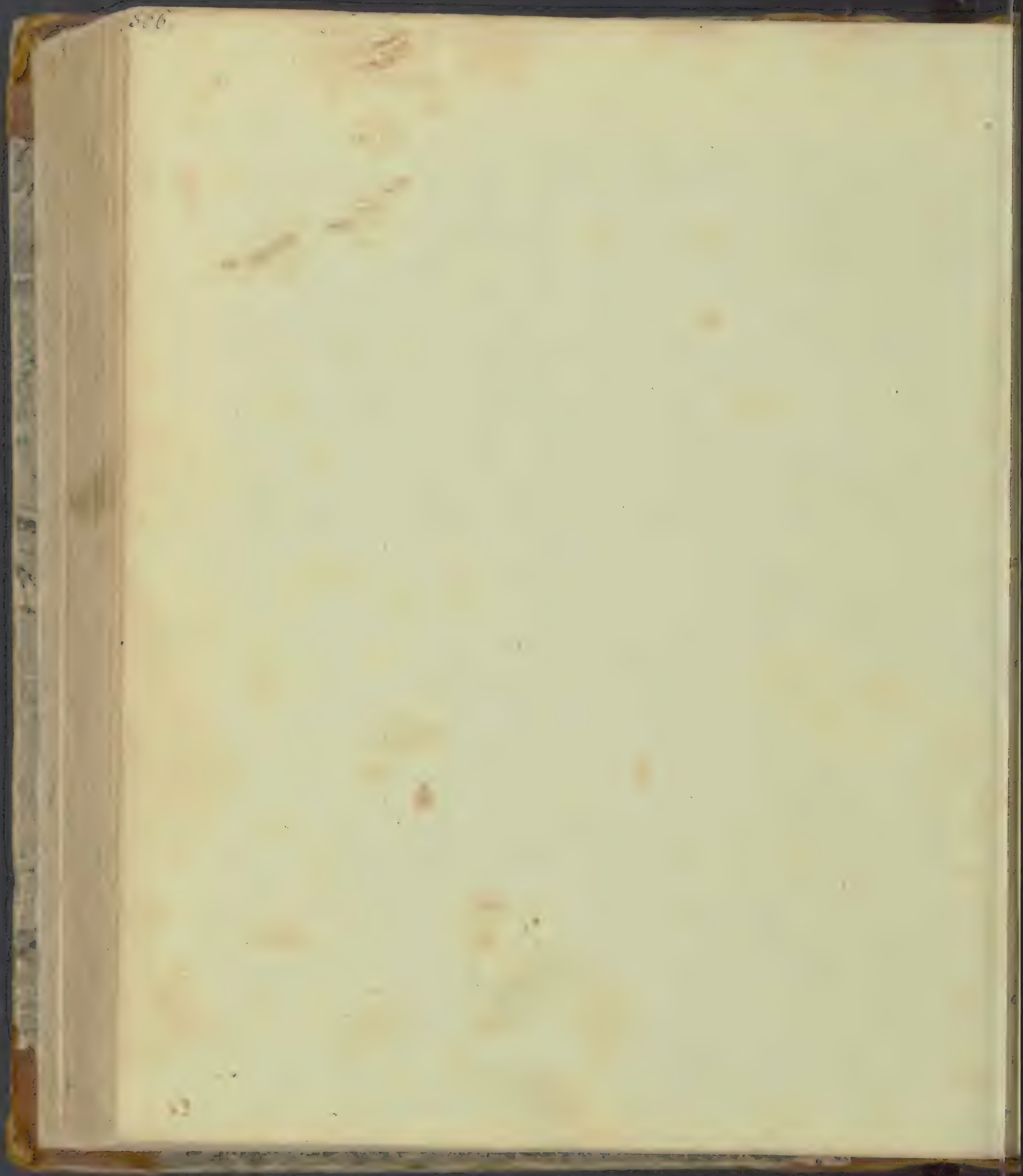
It was formerly decided that a release of a
bill or after having taken one involved in ex-
ecution & discharged him from further with a
release of one by the pit in a release of the
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a release of one by the pit in a release of the

1. The first is - that it is well as to the Court and the public
 2. The second is - that it is well as to the Court and the public
 3. The third is - that it is well as to the Court and the public
 4. The fourth is - that it is well as to the Court and the public
 5. The fifth is - that it is well as to the Court and the public
 6. The sixth is - that it is well as to the Court and the public
 7. The seventh is - that it is well as to the Court and the public
 8. The eighth is - that it is well as to the Court and the public
 9. The ninth is - that it is well as to the Court and the public
 10. The tenth is - that it is well as to the Court and the public

can be administered the creditor shall be liable
if he notified & applied & shown cause he - &
due notice - & sufficient reason is shown as that
it is not to be administered & the order by any other
person. If the application is successful he
cannot make another application until the next
of the County is a Justice or two Justices quorum etc
etc. If the writ is administered in the first instance
the creditor may apply to the Chief Justice of the
County Court & a Justice or two Justices or more
who have power & order the allowance of a writ to
cease. But the charge of the writ is on the
creditor & it is to be allowed eventually to the
debtor. If the creditor shows & continues him
in prison - he cannot procure his enlargement with
out saying that so will be the case. Seizure & Detention
are not the same in the law - in the law all
persons will be liable & in the law - in the law all
persons will be liable & in the law all persons
will be liable & in the law all persons will be liable
to be committed to the jail in the next adjoining
County Court in the next adjoining County -
have authority to order into close confinement all
persons - committed in execution for debt & damages
since 1800 - except when the execution is issued by
the Superior Court - & in such case the writ is to be
served on the Sheriff & the writ is to be

[illegible]

This title was also variation from *Alphonsus* manuscript.



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General principles of administration } Executors
or the duties of Executors & administrators } & Adm.

Executors and administrators have at G. Law nothing to do with the real estate as this descends immediately to the heir - and takes a different rent from personal estate. The law has provided for the disposal of the estate both real and personal but when the testator leaves a will this will is the rule or law for its disposal. The personal estate never goes to the heir immediately, but the legal title ^{first} vests in the executor or administrator ^{as trustee}, and the beneficial one in the heir or devisee - that is, he is trustee for the heirs legatees or creditors as the case may be. It is otherwise with real estate there being no intervention of Executor or administrator but the legal and beneficial title vests absolutely in the heir or devisee - so that creditors cannot come at the real estate thro' the ^{medium of} Exec. or Adm. But the heir and devisee are liable to pay to the amount of their respective estates first debts upon judgement & ^{2^d} specially debts or debts on bond, or debts under seal. Executions cannot be levied on their persons but only on their real estate. But by the Statute of this State both heirs and devisees are made personally liable for both judgement debts and specially debts. So where a man dies leaving real estate to the value of 50,000 \$ and personal estate to the value of 10,000 - leaving debts on judgement & bond to the value of 10,000 \$

executors & and simple-contract debts to the value 10.000\$ - here by
 administrator the C.L. if the judgment and specially creditors choose
 to take the personal assets in payment, the simple
 contract ~~debtors~~^{creditors} are without remedy. but Courts of Chancery
 will allow them to stand in the shoes of the specially
 creditors, that is will give them a lien upon the
 real estate to the same amount (and no more) that the Common Law
 would give specially creditors, so that in the example just
 mentioned if the debt of the simple contract creditors had been
 15.000\$ no remedy could be given even in Chancery for the
 remaining 5.000\$. This defect in the common law is remedied
 in most of States - In this State on deficiency of personal assets
 to pay all the debts whether specially or simple-contract - the execu-
 tor may obtain order from the court of probate to sell the real estate
 for that purpose - If trespass be committed either before or
 after proof of the testators will - the heir and not the executor
 may bring an action for damages - The testator may
 by his will vest power of attorney in his executor or any
 other person to sell certain specified lands for the payment of
 his debts. Where one by his will devises to his friends his personal
 estate and provides for the payment of his debts out of his real, the
 C.L. (which under the feudal system was always anxious for the
 heir) puts such a construction on it that the personal estate must
 at all events be appropriated before the real estate to the payment
 of the testators debts. By the Common Law there is priority of
 debts as 1st Judgment, 2^d Specially - & 3^d simple contract debts, but

200. 15

Chancery knows no priority in debts. — So where the Testator's estate valued at 5000 L is mortgaged for a debt & c. valued of 1000 L Chancery will compel the heir to sell this mortgage. that is enough of the land to discharge the mortgage debt — that the other creditors may have but see 136 the rest ^{what} remains to these creditors is called equitable assets and is ~~not distributed~~ ^{apportioned} to them by Chancery not like those that go to mill "First come first served" — The assets of the sale of real estate are called equitable assets — no estate is assets until turned into money — For the sake of the estate the Executor ^{in case of negligence} is liable to an action of debt to the extent only of debt. — There are two kinds of devise viz. specific & pecuniary. — The executor holds the legal title of both (if personal stuff) but must first appropriate the pecuniary devise for the payment of debts — afterward the specific devises such as money in a particular drawer or chest; a particular horse or cow &c. And in case all the legacies are not wanted the ^{deficiency} assets must be apportioned ~~first~~ ^{just} upon the pecuniary ~~assets~~ upon the specific legacies. It is the duty of the administrator to see that the estate is distributed as the law directs or according to the instructions of probate courts. The will of the ^{Testator} ~~Executor~~ is to be the guide of the Executor. — It is common the case that there are residuary legacies to the will — but where there are no residuary legacies — in whom does the residuum of the estate go as to residuary real estate there can be no doubt — it is considered as intestate estate and is distributed or inherited accordingly.

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executed & But where the testator intends to devise away all his
Administrative estate both real and personal and there remains
after all personal estate by the C. L. the Executor takes
it. This they consider as intended by the testator as a reward for
the executor's services - he not being allowed any ^{reward} by the Common
Law. the language of which is that the executor is not obliged to
accept but if he does accept of the executorship he must do the
duties assigned without compensation - Chancery puts the same
construction on wills where the testator does not devise to (or
otherwise give him a reward - but where a reward is given
or devised to the Executor Chancery will distribute or assign it as
intestate personal estate to the relations &c. So that if you enquire
at Common Law who must have the surplus, the answer will be
the Executor - But in Chancery parole evidence may be introduced
to prove the intention of the testator - provided this intention
be not contrary to the legal construction of the will - Parole evi-
dence may be admitted for setting the legal construction against
the equitable construction. The intention of the testator when it is
consistent with the law is always the rule of construction - Therefore
a misuse of technical language will not bar the intention provided
the intention be consistent with the law and clearly proved to be his
intention - So if a testator devises to another a piece of land to hold
in fee simple - altho the law would construe it to be an estate for life yet
it is, since the intention of the testator to be an estate to him &
his heirs, assigns &c. in fee simple. But if a testator devises his library
to be used by his heirs forever or a house to descend in tail it is not consistent with the law

It is immaterial what the words of the testator are **Executors**
if his intention can be got at - but it is otherwise with **Ex. Adm.**
12088. By our law no testator can give beyond the
first generation in tail - therefore all devises must be in fee simple
No parole evidence can be admitted for altering or diminishing the
legal construction. There are two kinds of ambiguity viz latent &
patent - The former is where there is no ambiguity apparent
in the will or devise - Here it is universally true that parole evidence
may be admitted: As where a Mother devises to the 4 children of
E. B. - and as it was E. B. had 6 children parole evidence was admitted
to prove which of the children she meant. Patent ambiguity is
where ambiguity appears in the words or sentences of the will
Here no parole evidence shall be admitted to prove the construction
of sentence - but where there is a doubt parole evidence may be
admitted to prove the circumstances of the family &c. & the state
of the property. As where one devises to J. Stiles and his children
if J. Stiles has children they shall be joint tenants - if not the word
children shall mean the same as heirs - So where John Stokes
devises to J. Stiles in tail (here on failure of heirs John Stokes has the
reversion) John Stokes devises this same estate again to Sam Stiles
the heir of John Stiles - this last devise of itself could only convey
to S. S. a life-estate but J. S. had a life-estate and more too before
therefore this last devise is the conveyance of the reversion & J. S. holds
the estate in fee simple. Parole evidence may be introduced to ^{the intention of} explain
a dubious word (as when one devised to seniors pueris) this some-
times meaning a boy & sometimes a child & child may be male & female

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executors
& adm.

So also formerly when the will was ambiguous
meaning sometimes the whole interest the testator had in
a piece of land and sometimes the property for life &c.

~~A~~ misdescription or misnaming may be rectified by parole evidence
But all evidence of this nature must stand well with the will.

The executor has the legal title to the personal estate of the
testator - and acts in the character of trustee. He is bound
to apply the asset first to the payment of the testator's debts
and 2^d the legacies and devises according to the will of the
will of the testator. If a man give a bond or deed to another
it cannot be paid until all the debts are paid. The liability
of the executor or administrator extends no further than
the assets - By assets is meant the amount of the estate wh.
sold to good advantage. If the ex. or adm. takes less for the estate
than it is worth he shall be liable for the deficiency not in the
character of ex. or adm. - but of wrongdoer. - After the funeral
charges are paid - as has been said - the debts ^{are to be paid} & 2^d Legacies ^{in order of} &c. -

The Stat. 22 Char. II is very important to be known as it is the
basis of the distribution of real and personal estate - By the
Stat. the estate of the deceased after payment of debts shall be
distributed to his children - but if he has no child then to his next
of kin - equal shares to equal degrees of kindred - In determining
who are next of kin computation must be made according to
the civil law. Next of kin in the lineal line whether ascending
or descending is very easily determined - in the collateral line
the rule is always to count up to the common ancestor of the deceased

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and the person who inherits - from 1^{st} deceased then downwards
to the collateral kindred - according to this rule those who are
within the least number of degrees from the deceased are the
next of kin. Thus a brother is two degrees from the proposer
collaterally - and the son of this brother would be of the 3^{d} Degree.
Next of kin always take per capita - representatives always take
per stirpes - the latter take as much as their ^{immediate} ancestors would
were they alive. - 2^{d} representatives shall be admitted amongst
collateral kinsmen after brothers and sisters children. -

A dies leaving 4000 $\$$ to be distributed to his 4 children - his el-
dest is dies leaving 5 children - these 5 shall take 200 $\$$ each
per stirpes - but if all the brothers and sisters are dead their
children shall take per capita all being of an equal degree of
kindred. By Stat 1. Jam. 2^d the mother is placed in the same
degree for the purpose of inheriting as the brothers and sisters
Posthumous children shall inherit for they are in law con-
sidered in esse. There is no inconvenience because the
estate is not to be distributed till one year after the deceased's
death. Where the next of kin are an uncle and the son of an
uncle - the son of 1^{st} uncle cannot hold because one degree
further removed from the deceased than the uncle. Uncles
and nephews are of equal degrees and take equal shares of
the intestates estate. The half blood shall have a share equal
to the whole blood and the next of kin on the mothers side
shall take equally with those of the same degree on the
fathers side.

executors The wife always takes one third of the estate
Cases of des. where there is issue - where not she takes one half
tribution un. When those from whom a title of representation
is the ~~stat.~~ (being in an equal degree) may be derived are at
Bar. & Jam. dead their successors shall take per capita
John Stiles but if some of those who are of an equal degree
die intestate: be dead and some living the children of the
living relation deceased shall inherit of the ^{pos.} ~~pos.~~ as much

2 Ves. 213 as their immediate ancestor who to have
in the second. done were he living per stirpes. Where the pro-
descend. and positus dies leaving an uncle & an aunt &
collateral li- two children D & E of a brother & two children F & G
nes & the has - of a sister - all being of the third degree shall
children A B & C inherit equally. But if the sister the mother
who shall inherit? of F & G be living the other two children D & E in-
The children ^{ally} equ- herit per stirpes - taking the share of their Father.

Pr. Ch. 54 Uncles and nieces are in equal degree and

1 At 454 receive equal shares - Grandmother will take

Salk 251 before uncle or aunt. — As the mother

1 At 454-5 is virtually placed in the second degree with

3 Pl. 50 brothers & sisters by Stat. 1 Jam. 2 if an intestate

2 D 344 dies leaving a mother - nephews & nieces the mother

440 shall not inherit the whole estate for the nephews
& nieces will hold as representatives and receive

1 Pl. 594 per stirpes - The aunt's son shall not inherit
while the uncle lives - so if an intestate leaves

the children of a deceased mother and the grand-Executors
children of another deceased mother the former & Ann.
shall take to the exclusion of the latter 1 Plow 25

Grand children of a sister and daughter of an
aunt are in equal degrees and shall share 1 Ves. 335-4
equally - A posthumous child may inherit 2 At 115
it with its mother. - The half blood shares 1 Ves. 307-370
equally with the whole blood. 3 At 2 Mod. 204

The grandfather is excluded in favour of 3 At 762
brothers and sisters. Mr. Povey comments that II has said
this rule is established as it destroys he says leaving child-
the whole symmetry of the doctrine of descents. in D & E?
There can never be a distribution of an estate D & E = B & C.
to the relatives of the deceased unless there be III B is dead & a
residuum after ^{all} the debts are paid - excepting son I?
that the wife is entitled to her dower whether - As before only
the debts can be paid or not. If the Father makes a stake, annuity
a gift to any of his children in order to set them as his father
out in the world it is called their advancement would have taken
and after the father's death the sum advanced Det. B & F - G, H & I.
is to be deducted from their share. - In this sons of F?
country the money which the father has ex- G, H & I = F or B,
pended in giving his children a college edu- Dead Living
cation has generally been considered an advan- sons of D - ?
ment. Our Stat. of distributions in the descending F & I = D.
line is the same as that of Charles II.

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executors In the collateral line our statute prefers brothers &
H. 1785, 1786. ^{brother} sisters of the whole blood to those of the half blood
H. 1787 & 1788. ^{brother} After the brothers and sisters of the whole blood and
H. 1789. ^{brother} their legal representatives are dead the estate goes
H. 1790. ^{brother} to the Parents & if they are dead it goes to the Brothers
H. 1791. ^{brother} & sisters of the half blood and their legal repre-
H. 1792. ^{brother} sentatives. There is a blunder says Judge Keene in our
H. 1793. ^{brother} unequal numbers, that. respecting descents which has been copied in-
H. 1794. ^{brother} to the Statutes of some other States. Legal represen-
H. 1795. ^{brother} tatives should have been inserted next after "brothers
H. 1796. ^{brother} and sisters of the half blood" & not after "next of kin."
H. 1797. ^{brother} His wife? H. 1798. ^{brother} All the real property in this and most of the States
H. 1799. ^{brother} descends in the same manner as personal estate
H. 1800. ^{brother} except what the properties acquired by descent derive
H. 1801. ^{brother} living, Reuben & or by deed of gift from some ancestor or kindred
H. 1802. ^{brother} along side the par. In the descending line every kind of real prop-
H. 1803. ^{brother} erty descends only in whatever manner it was acquired, descends
H. 1804. ^{brother} brother & sister in the same course. If the descending line be ex-
H. 1805. ^{brother} tinct the real prop. acquired by descent derive or
H. 1806. ^{brother} brother & sister. - George. Deed of gift must always go to the blood of the
H. 1807. ^{brother} & Edward Allen, uncle, ancestor from whom it came. But if there are
H. 1808. ^{brother} no brothers and sisters or descendants of the blood,
H. 1809. ^{brother} father & mother. the from whom it came it will go to the next of kin
H. 1810. ^{brother} but blood father? to the next of kin. It is the duty of the executor to
H. 1811. ^{brother} see that the real as well as the personal estate is dis-
H. 1812. ^{brother} tributed. According to our Statute the parents are ex-

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he will take it - if evidently left out of the will as *Executors* &c.
forgotten it will be distributio as intestate estate. *xx B.L. 887?*
But where there is a residuum not apparently for *Communis* the
given by the testator and no residuary legatee whole.

The executor by the l. law will hold it, he has *xl Edmund*
the legal title, but who has the equitable title or *living* *W. 248* some
beneficial interest - His title seems to be nearly of *Communis*
the same as the finders title to the goods found *427* *each of the children*

Courts I think have adopted a rule something of the nature then
different, that is, if it can be collected from the equally being in
will that the testator had no view of the executor's *4th degree*
having it, it shall be distributed to next of kin - *Stem. 104-604-7*
What would the testator say if he were alive and *75* - *361*
were asked what should be done with the 1000 L *2d 220-48*
not disposed of. By the common law the *Executor* *1 Wil. 515*
is not allowed anything for his trouble and ex- *1 Vern. 475*
pence - If therefore the Executor be well provided *1 Pl. 550-4*
for in the will it is presumed that the testator did *th. 368*
not intend to give it to the executor - this presumption *3 At. 226*
may be rebutted by parole proof. A suit of mourning *2 Ver. 91-161*
clothes or a gold is not considered as going towards *3 Pl. 40*
pay for his trouble - not an amplex reward. There
is a case in which it seems very judge there that
the distributing ^{of the residuum} to the next of kin would not corres-
pond with the intention of the testator as where the
estate is devised principally to the friends, and a

Legacies small sum as a shilling or the like is given to
 distrib. to each of the next of kin. Altho this seems to contradi-
 3 Plow. 40 dict the general principle that the intention of
 the testator ought to guide yet this is established
 as law. — Suppose in the second place the estate
 1 Vern. 31 will not pay the debts and all the legacies. It is a
 2 Vern. 688 rule in this case that the specific legacies shall be
 2 Salk. 416 paid next after the debts. And if sued by the pecuniary
 legatee the Executor may plead plene administratio
 where a specific legacy is lost without the fault of the
 executor that legatee must sustain the whole loss.
 If a testator devises to one and charges him to pay
 out of the estate 500 £ to his sister - the Executor must
 regard this last as a pecuniary legacy and see that
 2 Co. Inst. 191 it is executed. If land ^{only} be devised in these circumstances
 1 Plow. 422 the executor can have nothing to do with it because
 1 Atk. 505 the title of such land vests immediately in the devisee
 2 Vern. 111 Suppose the debts and specific legacies are paid
 6 Co. Inst. 46 and not enough left to pay all the pecuniary legacies
 1 Vern. 415 the rule is that the pecuniary legacies must all
 2 Vent. 558 abate in proportion. The executor is not bound to
 2 Vern. 205 pay any legacy until the legatee gives security to
 observe in case another debt should arise afterwards
 1 Vern. 31 Where legacies were left to several as ch. 5. c. 80 but by clause
 in the will it is to have his legacy at all events. here the
 rule that pecuniaries are to abate is adhered to and the

general principle that the intention of the testator is to guide - is waived. The executor may sell all the Ex. Verm. specific legacies and pay the legatees their value in specie. If the Executor omits paying any legacy he is liable to an action of breach of trust. Suppose a debt arises after the legacies are all paid and nothing left to pay it with and no bond had been given 1 Vern. 90 to secure a redemption must the Executor pay it 453-46 out of his own estate? If he did not know of the debt 2 Vern. 205 at the time of distribution Equity will suffer him 2 Ves. 576 to come upon the pecuniary legatees to respond - or 175 whether the executor knew of the debt or not if he Vent. 200 can persuade the creditor to come upon the legatees the creditor ^{by decree in chancery} may recover and the Executor be discharged - otherwise the executor is liable out of his own estate to pay the debt. In this state the Executor is not subject to the rigour of the Com. Law because the creditors must exhibit their claims seasonably or be barred. It was formerly said that where ever a legacy was given to a creditor of the deceased it went towards satisfaction of the debt but 1 Blk. 141 this rule has since then undergone a total revolution 2 Blk. 616 and was in the opinion of Judge Keene an unnatural 1 Vesey 521 rule - soon after this rule was established it was held 2 Ves. 409 that the legacy must be of the same kind with the debt 636 to bring it within the ~~debt~~ rule - justum genus

Legacies afterwards the legacy must be payable at the time
 An. Ch. 236 the debt is due to bring it within the rule. After this
 3 Pl. 237 there was a case where one devised to his creditor - af-
 2 Ch. 500-596 terall his debts were paid
 1 Pl. 410 Then a case occurred where one devised to his natural
 Pl. Ch. 240 son. The Chancellor finally said a-
 1 Br. Ch. 129-295 mong other things that the testator may be bound
 2 Pl. 555 tiful & ff too. - In short the rule if there is any
 is totally different from what it was. The wife may
 be barred of dower by accepting a jointure - or she
 may receive dower by refusing a jointure at her
 pleasure. Accumulation of legacies is where
 the same person takes two or more legacies - as if
 1 Br. Ch. 445-389 A devises to B 100L and afterwards devises to B
 120L &c Legacies will not accumulate when in
 the same will the expressions are in totidem
 verbis - when the same species of property and the
 same quantity are devised in the same instrument
 but one devises 100L to be paid in cattle horses &c it
 will not bar a devise of 100L to be paid in money the
 both are in the same instrument. - Also the same
 value to be paid in the same species of property devised
 in different instruments will accumulate.
 A Will may be void and one or more of the legacies
 may be barred of recovery - as when a testator revokes
 it in the same or another instrument - or A

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Common Law a devise may be ^{have} nullified by such execution
evidence - If the legacy is destroyed by any means & a claim
as by the inevitable providence of God. in this case
there is no obligation on the executor to make up
the loss - Where a suit was given as a legacy ^{which} Swinburne
at sea and before she returned was rebuilt with 522-4
none of her former timber but the keel - Sir Judge
Peere repeated the anecdote of a bishop and boy the
latter having a penknife ~~which~~ he said was the same
he had formerly tho there had been 4 blades to the knife
successively and 6 handles - the Bishop declared it was
not the same knife. A case occurred in Littlefield County
where a man devised a mill to another as long as it
would run - It appeared that no part of the mill was
composed of the same identical materials as where
devised except ~~one~~ of the wheels or mill like - the case
was not decided but withdrawn. A barn was devi-
sed with the corn ⁱⁿ it. the testator recovered and
some years after dies leaving the same will but
the corn ~~in~~ in the barn was not the same. The El-
ementary writers say he will take it if there is no more
than what was devised at first - But Judge Peere says
they have not gone upon the right principle. A
testator may devise bonds, notes &c but suppose the
testator lives after the will is made and the bond is
taken up by the testator. - The rule is that if the



Ademption Debt voluntarily settles up the bond the devisee shall hold against the estate as pecuniary legatee but if the payment of the bond had been compulsory that is by course of law it is presumed that the testator intended to ~~annul~~ ^{cancel} the legacy. If the testator calls in ^{the} money on account ^{of the} ~~debt~~ ^{being} likely

Th. Ray 355 to become a bankrupt - or to prevent himself from
2 Vern. 681 becoming a bankrupt it shall work no ademption. At present there seems to be very little distinction between voluntary and compulsory payment with regard to working or not working ademption. If the testator having made a will while sick afterwards recovers and does to ^{any} ~~the~~ legatee or legatees what he proposed to do by the will it is presumed to be a revocation of that particular legacy. As where the testator devises to his daughter and before he dies she marries and obtains a settlement. Or where the testator devises to his eldest son 400*l* to build a house with and before the testator dies the son builds a house and is supplied with money to pay for it. In both of these cases there is sufficient cause of ademption.

1 Vern. 95

Whichever a legacy is made in general terms as if one devises to a all his personal estate all the personal estate which he possessed at his death whether more or less than when the will was made passes

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to the legatee. Altho the intention of the testator is the general principle yet this intention is sub. to principles of policy. It is a matter of convenience that all the personal property should pass by these general terms for otherwise a man must be continually scriving his will - and it is perfectly right and just as the law is established. 2 Vern. 15, - 1788

It is otherwise with real estate which if acquired after the will is made must be considered as intestate estates. - Where a man de. 1 Rep. 124-597

gives a library or household goods - in these words. I give my library - household goods or the like only so much as he held at the date of the will will pass to the devisee. Where wills are republished wth real estate in the testator's possession at the date of the repub. will, must pass.

but if one devises all his land in Litchfield and after making this will ~~and before republishing it~~ ^{& then republishing it} he purchases land in Harrington & this Harrington land will not pass. ~~¶~~ One devises to his son Joseph - this Joseph dies - another son is born and his name is Joseph - the will republished, this will is good and the devise will pass. John Hites at present living in Litchfield devises to the town he lives in after which he moves to Harrington and dies which town has the devise? Litchfield. A man on a sick bed

Legacies

60. L. 112

P. 11. 470

2 Vern. 105

2 Vern. 110

405

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devises to his three children 1000^l a piece. before his death he has 2 more children. The two last do not take by devise. If the man be not sick at the time of makingth devise, the two last will take by devise because the parent may reasonably expect to have more children. If a stranger - as Mr. Puckler in his will devises to the 3 children of J. S. - here only the 3 children spoken of can take by devise because he might have devised to them in consideration of their individual affection for him -

but a parent is supposed in law to have ^{equal} the same affection for all his children: yet the current of authorities seems to be that the father gives only to children in esse at the time of making the will. Judge Reeve doubts the correctness of the principles upon which these authorities are founded. There is says he a tacit condition in a devise of this kind.

Two opposite contradictory decisions on this point. - A posthumous child not contemplated in the will is sufficient cause of revocation of D's will. If in the case before mentioned the stranger devises to the children of J. S. generally

nothing particular inquisitive with them it alters the case - all the children will take. If one devises to the children of A & B these children take per capita and not per stirpes. If there are no children

the legacy goes to the grandchild *en per stirpes* Executors
 If one should devise to the best fellow in a E. adm.
 town the devise would be void because of the *intest* prob. 401
 his peer — so if one devise to his relatives it
 would be void — and the estate would be distributed
 as the Statute directs. When one devise to his Str 820-905
 peer relations it was held to be void. 2 Vern. 521
 A legacy is said to be lapsed when it goes back 8 Plow. 115
 into the estate of the testator. A legacy will lapse Plow. 470
 if given to a man's heirs — there being no description 2 Vern. 207-378
 personae — but will pass if given over. A legacy may
 lapse if the legatee die afterwards — *Testamentum in*
presenti solvitur in futuro is the maxim of the law 2 Vent 347
 If one gives in his will 20£ to A to be paid at 21 South 415
 years of age — and dies before that time it is ^{not} a lapsed South 52
 A legacy — but if the words are these I give to A 1 Vern. 452
 20£ at 21 years of age it is ~~not~~ a lapsed legacy 2 Vern. 678
 This distinction says Judge Keene is too nice. — Plow. 11

~~Annually~~ Interest payable yearly on legacy makes it vested 1 At. 504-2 Vern 678
 If one devises to his children A. B. C. 50£ a piece but
 if A dies B to take A's part — Here there being no 2 Vern. 678
 limitation as to the time of A's death *chancery* 2 Plow. 470
 have adopted this rule that if A dies ^{before 21 years of age} or ~~in~~ marriage
 it is to be given over — but if afterwards it is a
 lapsed legacy. ~~The~~ ^{or} If A devises to B at 21 or mar-
 riage — if given over in case of death it will pass

Legacies

As to Conditional Legacies the general rule is that where the condition is precedent

but where subsequent.

Where the conditions are illegal or unlawful Legacies will vest tho the conditions be not performed. It is unreasonable to impose restraints in many cases - as if one devise to another on condition of his not marrying at all - here the legacy is good tho the conditions be not performed - so if the conditions are that the legatee shall not marry one of ~~any~~ particular profession as a lawyer or a minister the legacy will vest just as if there had been no condition. - And it makes no difference whether it is given over or not. These two cases stand upon the same ground. One exception only to the two cases above mentioned, i.e. Where a man leaves a wife and children with a legacy to the wife on condition of her not marrying - as he may not wish his children to be under the controul of another - here the legacy does not vest unless the conditions be performed. - The deviser can in this case lay restraints upon his own widow. ~~But~~ he must have children of his own. When restraints upon marriage without consent are limited at all it may be reasonable

1 Vent. 201

3 Bac. 479

1 Vern. 20

So a man may in his devise make the condition Executors
that the devisee (his daughter) shall not marry & follow
a particular man. - a man specified in the will.

But if the conditions of the legacy are generally 1 Vent 199
that the legatee shall not marry without the con- 2 Vent 293
sent of a certain person. it is to be considered as a 10th 502
restraint in terrorem - but if the legacy is given Prich. 565
over the conditions must be performed to make
the legacy vest. The same words may take a
different construction according as the property
is real or personal. one says in his will I give
my horse to Tom & vokes. - Here the horse vests ab-
solutely in the devisee - But he says in the same
words I give my farm Blackacre to John Stiles
Here John Stiles by the English law takes only a life
estate - it afterwards goes to the heirs of the testator
In deeds it is necessary in order to convey an estate
in fee simple that heirs, assigns &c be expressed
but in this country the words heirs &c are not ne-
cessary in will, to convey an estate in fee simple
where the intention is to be the rule of construction.
A testator says I give besides my cloak 100 L. here
it is evident he meant the 100 L & the cloak too should
pass. There is a case in one of the books where one
devised to A 100 L and out of this 50 L to B - and
it was finally decided that A should take nothing,

Legacies

2 Fern. 516

1 D^o 355

Tho says Judge Reeve it seems they in this decision swerved from the true principle - it gives to B to as trustee to distribute to his friends and relations according to his discretion - this the law admits - but at the same time this distribution is liable to be overruled by Courts of Chancery. A has a daughter by his first wife - marries a second wife and has a daughter also by her - in making his will he devises to them 1100 L to be distributed to them according to her discretion - she gives her daughter in law only 100 L - chancery interfered. A devises to B 100 L to be distributed according to directions in a note to found in such a drawer - no note was found. Here B took the 100 L acc. to strict legal construction not because he had a right to it but because he had the legal title and no one the equitable title. The soundness of the doctrine is to be questioned. Why might he not be trustee as an executor and see it distributed to his heirs. John Hiles devises to A 400 L to B 400 L and to C acc. to the discretion of the Executor - on application to Chancery it was decided that B should have 400 L and the rest (1500 L in the whole) distributed by statute. A devised land for the payment of ^{his} debts - In England the per-

201

sonal property must at all events be appropriated Executors
as far as it will go to the payment of debts and Settlin^g
afterwards the real estate - This is a part of the
feudal system remaining in the law. It is
otherwise in this State. Here land devised to
pay debts may be appropriated first. The law
is such now that a man may give his personal
estate for the use of one and remainder to another
this obtains in respect to such kind of personal
property as is not worn out or spent by using
as Books, plate &c &c. If one devises a flock of sheep
for a household of oranges for life and rem. to another
and they are not preserved nothing can be done
to secure their value to the remainder man. J. S.
gave to ^{his aged mother} C. 2000^l for her use and remainder to B
If the interest of D sum had been enough to sup-
port her the principle would have been reserved
for B - but as it was she used from the principle
& the rem. went to B. Personal property cannot
be entailed. . . . Donatio causa mortis or a gift
in contemplation of death may be made by parole
the property must be specific not pecuniary -
cannot take effect if the donor get well - must
not be inventoried by the executor who is obliged
to give it up when called for by the donee. It has
been very much contested whether a Chop in action

2 Pl. 556

{ 2 Vol. 441
alt about 1 }

could be devised. A bond at common law is not negotiable. In whose name then can the legatee or holder sue. - If the bond is given as a legacy and is voluntarily paid it is all well and the legatee can hold against all claims. Why then may not the legatee compel the payment? Why may not sue in the name of the executor having previously given security not bring any expense upon the Executor. Undoubtedly he may. A chose in action cannot be donatio causa mortis. It has been observed that that seasoned property could not be entailed. There is one species of personal property different from the rest - that is a lease. - a lease may be devised to A during life remainder to B during life & so on to as many as the testator pleases: but the legatee ~~must~~ to take must have been in esse at the time of the devise. This is as far as the law will warrant. but in point of principle I do not see why judge here why a remainder may not be given to one not in esse - as if one give to A for life remainder to his eldest son who is unborn. - If the donees are all in esse it is no matter how many of them there are - (candles lighted and burning at the same time). One gives in general terms his plate to A - remainder to B - How shall B know he has got all the plate which a heir

2 Pl. 82

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at who take for life may be compelled at anytime Executors
during his life to lodge an inventory of the Queen's Adm.
bity of State in the Court of Chancery. Real es-
tate may be subject to the payment of a legacy. 1 Salk 411
as where bond or specialty creditors take all the 3 Bl. 522
personal estate. Here the legacies may come up
on the heir to the same extent the specialty
creditors might.

As to the time at which the legacy is to be
paid if fixed in the will, that is the true time 2 Salk 414
If it is not fixed in the will the law allows one
year for the executor to convert the estate to
money & at this time (for the rule of law is
universal) and not before the Executor is com-
pellable to pay the legacies. It leaves a legacy
to B an infant to be paid at 21. — B dies at 15. 2 Vern 31-119-285
according to what was said before this is a vested
legacy & must be paid to the infant's administrator
but the contrary is the case if the legacy is given
over — here it shall not be paid to the administrator of
the infant but to him to whom it was to be paid in
case of the infant's death.

The law respecting interest upon Legacies is that
where the legacy becomes due at the end of one
year after the testator's death interest shall accrue
from the time demandable if not demanded before the end of the year.

Legacies

- Let the legatee may, after the end of the year whether
 he personally demanded or not institute a suit a-
 1 Outh. 104 gainst the Executor - No suit can be instituted
 2 Ch. 405 against the treasurer of a State or town or Cor-
 poration without a previous demand. It left a
 legacy to B - B being at sea did not return till
 after some years. - The court would not give him
 interest upon the legacy - for it was the legatee's
 duty to make a demand for the legacy - This was
 not done - and perhaps the money had been ly-
 ing by for some time - ready for the legatee. -
 There is one exception to this rule - Where a leg-
 2 Ch. 415 acy is left to a minor who has no parent or guar-
 dian - Here the Executor must keep the legacy
 till he becomes of age and account to minor for the interest of it. It
 3 Atk 101 leaves a legacy to be an infant to be paid when 21 years
 1 Ex. Cas. 301 old. - If this legacy be left by the father to his minor son
 2 At 339 and no other provision for his support or maintenance
 2 Vent. 346 interest will accrue - it is otherwise if the legacy be
 given by a stranger or any other relation but the
 father. There appears not to be a sufficient dis-
 tinction in point of principle says the judge be-
 tween the limitation to one year by law in the
 payment of legacies - and the limitation by the will
 of the testator. But by the preceding cases - if A devises
 to his son who is not his son, B has no guardian or

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parent, the Executor keeps the legacy till the leg- Executors
at 20 to 40 - and accounts with him for interest &c. &c. &c.
but if a Parent devises to his son who has means
without the interest no interest is paid. — When
a legacy is in a way to increase immediately as a Bul. 240
note or bond upon interest — the interest is reck-
oned from the death of the testator: —

There is no statute of limitations prescribing
a time beyond which a legacy cannot be paid Pr. Leg. 223
yet lapse of time may raise a presumption a- 2 Vern. 21
against the legatee. A note of hand given by Mr 484
Starr of Goshen when the limitation to notes of
hand was 25 years — The executors of the payee
finding a note among the testator's papers put it
in suit & ~~afforded~~ ^{12 per cent} of 20 years after it was given.
This length of time added to what appeared in court
viz that the payee had always been crowded for money
and had several times borrowed money of Starr
and returned it again with ^{12 per cent} interest were the
grounds on which the court gave judgment
against the executor. Some years after the re-
ceipt was found stating that the note was lost. —
As the Com. Law is in England (and there has
been no decisions to the contrary in this Country)
the repugnant to our notions of good principles flow 3 Bac. 482
the Executor cannot safely pay a legacy to the father

Legacies

of an infant Legatee without either a decree of Chancery or security from the parent to refund in case the executor be sued for it. It left to B's son a legacy, the executor of it knowing that B and his minor son were wealthy merchants in London - pays the legacy to B - afterwards B & the son become bankrupts - the son sues the executor and obtains a verdict. The legatee must obtain the assent of the executor before he can come at the legacy - else the whole settlement of the estate might be deranged. - English courts have gone to great lengths in construing words into assent as where an executor said to a legatee "I give you joy on account of your legacy." Assent or no assent the legacy may be sued for and recovered after the debts are paid. Whoever is a trustee, courts of Chancery will lay their hands on him. When lands are devised for the payment of debts the Executor may be compelled to sell it by Chancery. If the Executor gives to the legatee a bond or note to the amount of the legacy. - & Legacy is merged in the bond - and the bond is to be settled in no other way than all other bonds. But if the Executor binds himself by a penal bond - making the payment of the legacy the condition of & bond - here the bond is only a security for the legacy and will not prevent

3 Bac. 485

Lout. 282-9

Hood. 525

2 Vent. 358

5 Cok. 59

Agent

Bul. 120

Gro. Jam 279

264

3 Bac. 489

59

the legatee's taking the process ^{in January} ~~in June~~ as he might Executors
before the bond was given. In the one case the bond & adm.
is as a security for the legatee, in the other the bond
is in lieu of the legacy. A legacy is not recoverable
at common law courts, but in courts of Chancery 1 Sider. 45
and this court go upon the ground of making a trustee do his duty. 2 Sh. Rep. 23
Yet if the executor promise ^{5th 10} to pay the legacy it is recoverable at common law 2 Bl. Com. 615
on the ground of this promise - But this promise
must now be made in writing - and upon some
consideration - in this case assets are viewed as
sufficient consideration. If a legacy be given ch-
arged upon land or real estate the executor has nothing
to do with it. Here the heir or whoever takes
the land becomes trustee for the legatee and
Chancery will compell him to pay the legacy.
This is the practice in England; In Connecticut it
the practice is to sue for a legacy in courts of com. law
never in courts of Chancery or Probate courts. -

If the legacy be a specific one & the Executor hath
assented the action ^{must} be brought before Com.
law courts on the ground of ^{assumpsit or trover} ~~assumpsit~~. What defence
is the executor to make before the court. The plea
must be p^{er}one administravit. - I. S. leaves a leg-
acy to A. B. of 1000 £ each - the executor has paid
all the debts and specific legacies and has 1500 £ left

Assets

The executor being brought into chancery by the legatees must plead tender of 500£ each and close his plea with *plena administravit*.

as to the payment of debts. There are two kinds of assets viz Legal & Equitable. Legal assets are such as are to be paid according to some rank or priority and come into the possession of the executor immediately upon the death of the testator & without the interposition of Chancery. Equitable assets

are such as (according to the *Idem*) the executor could not get at without the interposition of Chancery - At present equitable assets are extended

* that is, the equity of redemption & include not only what is got at by degrees of chancery but what comes into the executor's hands by sales of real estate and the payment of a bond with mortgaged security.*

11. Rem. 612

3. W. 341

2. Vern. 764

Lord Alcock

distribute to all parties

passive - 11. Rem. 612

J. Stiles devised to J. Roe Blackacre for the payment of his debts & Roe to take the surplus - there being no personal property. Roe does not sell the same. The Executor by a decree in chancery is ordered to sell Blackacre (Blackacre). The assets of this sale are called equitable assets. No priority of debts takes place as to equitable assets - all the creditors simple contract as well as specially and judgment creditors come in for proportionable payment in case the estate does not hold out.

Again J. S. devise to his executor for the payment of his debts a piece of land. he is willing to dispose of it for the payment of the debts. The assets of this also are equitable assets tho without the interposition of Chancery. Real assets (or real estate) are liable to pay specially, judgment &c debts but ^{not} simple contract debts. Where the specially &c creditors take personal property to satisfy their own debts and there remains not enough to pay the simple-contract-creditors, then by decree of Chancery the simple-contract-creditors will be allowed to come upon the real estate to the same extent (that is to the same value) that the specially &c creditors would have done. This is called marshalling assets. As far as respects legacies the English law is the same as ours - but as to the debts of the testator very different. In Connecticut the law lays hold of real estates and if devised for the payment of debts - they may be taken first. Emblements are considered as personal property. these are not strictly appendages of the real estate. Emblements are such growth of the land as could not be produced without labour as Wheat, corn, oats &c what is spontaneous growth (tho by labour capable of being increased in quantity) as grass &c is not considered emblements. However may be either

2 Bl. Com 412
1 Ves. 512

Assets A bond is not assets till paid up. Suppose the executor neglects to collect or even gives up the bond to the debtor. - if the executor be sued why cannot he plead *plene administravit* - he has no assets.

20 Bl. Com. 512

He may be sued before chancery for breach of trust and then he may, if he can, plead or show that the bond was not good. - John Stiles appoints a debtor an executor to his estate. As the law was formerly the executor's debt was released - but now it seems to be understood that he shall not withhold it from the creditors of the estate tho he may from the legatees.

Where an administrator is a debtor, the debt is not released but even if the debt & legacies are all paid it is to be distributed to the next of kin. Why then should an executor. It is for the same reason that the executor has the residuum of an estate - because he has the legal title and no one having the equitable title can sue for it. - It is the business of an executor to sue for all the debts of the testator. But the executor cannot sue himself. There is no good reason says the Judge why the executor as well as the administrator may not be compelled to pay his own debt either to the legatees if their legacies are not otherwise paid or to the next of kin. The equity of redemption of lands mortgaged in fee is equitable assets for the creditors can have no relief from it but in a court of Equity.

1 Co. 87

2 At 290

2 Bl. Com. 682

If the land is forfeited to the testator it goes to the Ex-
 ecutor and not to the heirs - because it was a security, & admin^{rs}
 for personal estate. Priority of debts viz, 1 Funeral
 charges. 2 Crown debts - i.e. debt due the King on record
 or specially - 3 Debts on record or judgment debts and
 debts for which real estate is mortgaged. 4 Specially debt
 as bonds covenants &c under seal - 5th simple con-
 tract debts - as notes unsealed and verbal promises.
 Suppose all the funeral, crown & judgment debts
 are paid - and all the debts on bonds but two - enough
 is left to pay one of them - which must the executor
 pay first. If he is sure of one of them this one must
 be paid. In B. & M. 611 It is said that the executor
 commenced by one the executor may confess judg^{ment} 1d M 295
 ment to the other and pay him first. An executor 2d M 401
 may be excused when he pays a simple contract
 debt before the specially debts are all paid - as when
 he is not knowing to any ^{particular} specially debt. but not
 if he pays simple contract debt before judgment
 debts - Here the debts are supposed to be known as
 they are upon public record - In the former case 2d M 57
 the specially debts cannot be ^{known} known to the executor
 without a suit commenced. Priority of debts in
 most of the States is done away - This system was
 broken down at once in this State by statute no
 priority being allowed except with funeral ex-

Attest

penses & Debt due the public & sickness debts such as apothecaries and physicians' bills - By sickness debts our courts have construed to mean last sickness debts. If the person gets well (after being sick) debts contracted during this sickness for medicine nursing &c are upon the same footing with other debts. After the body of the ^{deceased} testator is deposited in the grave and the funeral expenses paid - it is the duty of the executor or administrator to go to the court of probate - to represent the estate either insolvent or otherwise as it may appear to them - that is, that the estate both personal and real is not sufficient to pay the debts of the deceased. Where it is doubted it is best to represent it insolvent because if it is not so no evil will arise but if it proves insolvent when represented otherwise the executor or administrator must advance properly from his own personal fund. This court after the will is proved appoint commissioners to examine the claims of creditors to the estate. Whatever claims they reject as not proved they reject conclusively - there being other resort except where estate is discovered afterwards that is after this estate has been distributed. In this case the commissioners are to be called again and new claims may be exhibited and if admitted

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they shall be advanced in the same proportion as Executors
the other claims were before this new discovered & Admin^r
estate is averaged upon the ~~estate~~ claims of all
the creditors. This is supposing the estate to
be insolvent. The executor or administrator
may contest what ^{Debt} the commissioners have
allowed. & if successful he must represent to
the court of probate and have the commission-
ers called again and have a new average —
struck by court. But what if the executor be
sued. — ? If the estate was exactly enough to pay
the funeral, sickness & public debts he may plead
plene administravit. but if enough to pay part
of the debt of each creditor he cannot plead ple-
na administravit. but must plead the doings of
the court of probate. & die leaving to his creditors
only 2/6 on the pound. after the estate was settled
it was discovered that the Deceased had a ticket
in a lottery in England which drew a prize of 1000£.
upon discovering this it is the duty of the Ex. or Ad.
to inventory it and represent to the court of Probate
who will strike an average — as before and perhaps
satisfy all the claims against the estate. But —
suppose the executor or administrator will
not do it — will take no notice of this new discov-
ery property. ? He may be sued upon the bond which

11th
Assets
Priorities of Debts

always remains in the court of probate. It is generally true that all debts ^{against the estate} in connection are put upon the same footing. But suppose a creditor by legal diligence has obtained a mortgage - or an attachment as security for his debt must his debt abate in case of deficiency of assets. The the equity of redemption in case of mortgage is not destroyed yet his debt shall not abate with the rest of the creditors. As where a ship was attached, the owner being afterwards a bankrupt, it was decided that the creditor who attached the ship should hold to the full amount of his debt. Two cases of the same nature have been decided before the Id court - and one in Windham county in this State. The cases with respect to Bankrupts and dead persons are in this respect similar. A voluntary bond - or a bond without consideration is to be paid next after the ~~legacies~~ debts and before the legacies. Voluntary bonds must be proved to be such to the commissioners and represented by the commissioners to the court of probate. Suppose a testator makes a will but appoints no executor, as is often the case, the court of probate will in this case appoint an administrator-cum-testamento annexo - the

11th 292

2d. 6m. 507

will be the case where the executor named in the

will is incapable — or refuses to act. By Statute Executors
 "The widow or next of kin" — is said to be the person & Admin^r
 to be appointed administrator — By this indef-
 inite expression it is supposed to be left to the dis- Cro. Car. 106
 cretion of the court to choose which shall be app- 1 Pl. 181
 -ointed. If the wife die the husband is to be the ad- 3 Atk 526
 -ministrator if living. There is no statute nor law 2 Pl. Com. 496
 to prevent married women from being appointed
 administrator to "next of kin", but owing to the in-
 fluence which the husband may have over her
 single "next of kin" are usually preferred.

It is frequently the case that two ^{or more} administrators
 are appointed — but not to have separate parts of
 the estate assigned to them — unless some part of 1 Brd. 908
 the estate lies ⁱⁿ one county and some in another ~~and~~ 1 Salk. 96
^{Here} for their greater convenience an administrator
 may be assigned for each part. This practice is
 not uncommon in England. The right to adminis-
 tration depends upon statute, principally upon the Stat.
 of Hen. VIII. Where a person dies intestate the legal
 title to his estate does not vest any where till letters of
 administration are taken from the prerogative or
 probate court. These make his duty & powers relate
 back to the death of the intestate. In appointing ad-
 ministrators courts of probate exercise a kind of
 discretion — yet relief may undoubtedly be had against their appointment

appointment. These courts have generally preferred the descending
line in their appointment of administrators so also
2 Bl. Com. 505 the whole blood to half. In one instance - however where
there were 10 brothers & sisters of the whole blood the
court gave the administratorships to a sister of the
half blood. Suppose the next of kin is a minor?
He may be appointed but cannot act till 21 years old
In this case an administrator durante minore
etate. - This kind of admin. need not be next of kin
and it is common to appoint a creditor. So if
an administrator dies - no obligation to appoint
next of kin to succeed him. In England an admin-
istrator is obliged to give bonds for the faithful dis-
charge of his duty. He cannot therefore be appointed
till 21 years of age. but an executor may be appoin-
ted at any time but cannot act till 17 - not therefor
obliged to give bonds. The grounds of not requiring
bonds of an executor is that special confidence was
reposed in him by the testator - and the law does
not doubt but that justice would be done. By
our Statute an executor - may act when 17 years
of age - an executor must give bonds for the
f. discharge of his duty - therefore an executor at
the age of 17 may give bonds - contrary to the
established rules of the Com. Law. But by the
Com. Law, where a legacy is to be paid & sometimes

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"afterwards Chancery will require the executor ~~if~~ ^{Executors} &
~~if~~ ^{to} give bonds whether he be an adult or a mi- Adminis^{tr}
nor. Sometimes an executor will be required to 2 Co. Ch 152
give bonds when he is thought ^{Chancery} by ^{himself} hardly wor-
thy of confidence. - Here poverty is not considered
a ground of requiring bonds. By the Com. Law
the executor or Administrator is to make an
inventory of the estate and deposit it in Chan-
cery. In Com. the court of Probate appoint ap-
prizers of the estate. The executor or adminis-
trator is not accountable for the full amount of
the appraised but only for the real sale. Yet if
he hath sold articles for less than their value he
may be succeeded by the bond. The appraised can be
of little use but the inventory made out by the
apprizers furnishes the court with the num-
ber of articles of the estate - so that the executor
is accountable for all them tho' not for their ap-
praised value. It is the duty of the court of Probate
to revoke letters of Administration when the admin-
istrator becomes a lunatic - or when a will is found
as to the rights and powers of an administrator.
Then we the same as of an executor. Suppose 5 Co. 9
two Administrators be appointed and one dies the
right of Administration is transferred to the sur-
vivor. Fees of attorney may be vested in an administrator or ex.

Appointment Where two executors are appointed for one estate
 the act of one of them is as valid as if both exe-
 cuted. It is otherwise with ~~an~~ administrators,
 where two are appointed: Here both must be joined
 to make an act valid. Thus a release of debt or
 1 Ch. 410 sale of property by one executor is valid - but sale
 of property by one of two administrators can be
 avoided. Suppose one executor dies before dis-
 tribution of the estate? Here his executor may be
 an executor to the first - but his administrator
 cannot be administrator to the first. The admin-
 istrator has actions for all the personal contracts
 of the testator. No action can be had for personal
 injuries done to the testator ^{or intestate} - as for assault and
 battery - slander &c. No action will lie generally
 for such injuries as do not affect the assets.
 directly as where by battery the testator's
 leg was broke: here no action can be had altho the
 personal property was diminished as much as
 the amount of the surgeons bill. Actio personae
 moritur cum persona. Neither can any action
 be brought against the executor or administrator
 for the personal injuries done by the deceased.
 The executor is not answerable for the torts of
 the testator - unless the assets are benefited by such
 tort - as if the testator had shot his neighbour's sheep.

But if the testator had taken the horse away it is calculated
premised that the assets are benefited ~~and~~ & a claim
action would lie whether the horse was ac-
tually sold by the testator or is now in the pos- ^{if leg. spec. trans. leg.}
session of the Executor. — In the latter case an ^{Brig. Digest}
action of trover would lie — So if the testator had ²⁹²
taken a load of wheat from the field of his neigh-
bour an action would lie against the executor
(on the ground perhaps of promissory law) but if the ^{4 Mod. 403}
testator had set fire to the load of wheat of which he ^{1 Ash 314}
means it is destroyed no action could be brought ^{6 Mod 145}
In both these cases equity would seem to en- ^{2 L. Ray 91}
title the sufferer to damages and the time will ^{1 Vent. 30.}
come probably says Judge Pearce when courts will ^{imposition case}
give damages in the one case as well as the other ^{Hamb. 8. 100}
The cases mentioned above are equally applicable
to an administrator and intestate.

As to the personal trusts of a testator the ex-
ecutor has nothing to do with them — at bail ^{1 Rd. 17}
a horse to J.S. J.S. dies and B comes and claims
the horse of the executor of J.S. Here if the executor
makes a wrong preference he is liable. &c. . . .

He dies and appoints B (being his creditor) his executor.
In the common law debts of a superior degree were
to be paid first before he retained. If debts of the same
degree he may retain for himself in preference to all oth. claim.

Chattels
real

and this whether due immediately or not.
All chattels real and personal come to the ex-
ecutor or administrator, ^{of the deceased} in some way or other.
Chattels real in Connecticut are not of much
value except those of leases for years - but there
is room for some difficulty in this state on ac-
count of our courts having reckoned long leases
real property and short leases personal property.
(" Judge Keene says he has endeavoured to find out from the books why a lease
is so often for the term of 99-999 &c years rather than
for a round number of years as 100 - 1000 &c but never could
find any reason assigned - tho he says a no subtle, there was one.")
A lease blackacre to B for the life of C - B dies before
C - what is to be done with the interest in this lease.
It cannot go to the executor to make up assets because
it is real property and there is personal enough to pay
all debt, legacies &c. It cannot go to the lessor be-
cause he is paid for the lease during the life of C &
C is yet alive. - It cannot go to the heir because -
a life estate is not an estate of inheritance.

See Stat.

Emblements go with the real property if it can
be gathered from the will that ^{this was} the intention of
the testator - otherwise they are personal and go
38th 13 to make up assets. - Cider mills - iron ovens &c
Wills 28-34-5 are usually reckoned personal property. There is
one species of personal property different from

all others viz. the Paraphernalia - or goods at Executors²
the wife's disposal. These do not pass to the executor & Admin^r.
till all the rest of the personal property is exhausted.
There are two kinds of Paraphernalia viz. 1st Bed-
bedding & clothing suitable to her condition in
life - 2^d Ornaments such as Trinkets, jewels, watches
&c. These are no part of the husband's estate - they
cannot by him be devised away - (~~though~~^{he} ~~may~~^{may} ~~take~~^{take}
^{second kind} ~~them~~ in his life time to pass in debt) nor
are they to be inventoried with the personal prop-
erty. As to the 1st kind they can by no means be
taken from her in any case. The 2nd vest in the
wife after the husband's decease yet after all
the personal fund has been exhausted - and there
are debts remaining these may be taken by the
executor or may be sued for by the creditor. They
cannot be taken away for the payment of volun-
tary debt, as legacies &c her right is superior to
them. She is viewed as a creditor when her jewels
80 H. 570-575
&c have been pledged by her husband - and there
is personal property enough to pay ~~the~~ debts of
her husband besides (allowed 200 £). Where real es- 80 H. 80-11.
tate is devised for the payment of the debts and 10 H. 369
her Paraphernalia have gone into the personal 1 R. 729
fund: She as creditor in equity may go against
the real estate to the value of her Paraph. if less than the ^{sett.} specifically

12
Abetter

especially &c debts taken from the personal fund
The same is the case if the land goes to the heir
and the specialty &c creditors take from the per-
sonal fund. — Chancery will interfere (some-
times when the wife has a preference for her
jewels) and prevent them from being alienated
when she might have had the value of them
from the real estate. This is law as it is in Eng.
A question perhaps may be raised here whether
in this state where an order may be had from
the court of probate to sell the real estate if the
personal will not pay the debts — whether, I say,
the executor may take the paraphernalia of
the testator's wife before the real estate is ex-
hausted — The decision of Judge Reeve is not remembered.
It is always presumed that the executor does
his duty — & does right — it belongs to the other
party in any suit to show he has done wrong.
If he leaves out of the inventory any of the per-
sonal estate he is liable to an action of breach of
bond — But suppose he had, before making the in-
ventory, sold a note of exen worth 30 £ and had
paid a legacy of 30 £? No recovery can be had if
there proves to be properly enough to pay the debts
& legacies — unless it can be proved that the oxen
were worth more than that sum viz, 30 £.

The testator leaves a bond against it. — it is in- 210
solvent. — The executor must use discretion — per- Executors & Administrators
haps put it off till it has acquired property — and
whenever it is obtained it must be distributed as
before directed. By the English law no costs of suit
are to be paid by the executor or administrator Cro. Jam. 228
whether plaintiff or defendant, successful or not. Jolt. 116
but in this State costs are in case of defeat to be Cro. Elix. 69-503
paid from the estate of the deceased. But advice Cro. Car. 289
must first be had from the prerogative court. Hut. 700.

The executor may and he is to be sued in his personal Litch 220
or official capacity as the case may require. 1 Vent. 92

The executor can never be arrested — the process Cro. Jam. 330
must be by summons. Judge Reeve here men- Cro. Car. 59
tioned a case where an executor in New York was
arrested — this executor brought a suit of assault
and battery before a court in this State — he Judge
Reeve being counsel on one part. In this case
this principle (the collateral) was established viz
that the common law ^{of England} is presumed to prevail in
all the States of the Union — untill proved to the con-
trary. —

As to an Executor De son tort —

An executor of his own wrong is one who under-
takes to deal with the property of the Testator as
if ~~it were his own~~ he were the rightful executor.

De son tort as if retain property to satisfy his own debt - sells
 the testator's property or collects debts. If he be
 sued by a creditor he is answerable only to
 the extent of assets in his hands unless he make
 a false plea as where a Co^t creditor sued an
 executor *de son tort* - and this executor ~~in~~ pleading
 that he had nothing to do with the estate - it was
 2 Bac. 390 proved against him that he had sold a bee steed
 5 Bch. 30-2-3 value 15/- & he was compelled to pay the whole Co^t
 Rol. 928 whereas if he had pleaded tender of assets viz 15/- he
 Carth. 104 would have saved at least 59 £-5-^s. When an
 1 Font 349 Executor *de son tort* is sued by the rightful ex-
 1 Salk. 356 ecutor he is answerable for the whole damages.
 Cro. Eliz 630 as if the former had sold a horse for half its value
 2 M. 1106 he is answerable for the full value. In Comm.
 it is not possible for this law to operate - for it our
 average law would be entirely broken up. Where
 a creditor sues a rightful executor upon the contract
 he can obtain only his share unless the general a-
 verage of the court and no enquiry will induce us
 to the faithful discharge of his duty. But when a
 creditor sues out a devastavit for breach of bond
 it belongs to the creditor to prove devastavit (as it
 is always presumed the executor does his duty). If
 the creditor makes out his plea of devastavit then
 the executor is answerable to the creditor to the ex-

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tent of what the assets would have been had he Executors
(the executor) discharged his duties faithfully. The bond & Admr.
lodged in the court of Probate for the ex's discharge
of duty is conditioned that the ex. is to exhibit
a true inventory of the estate, administer impartially
&c. The court will allow out of the estate of the
deceased all reasonable expenses the executor has
been at in maintaining a reasonable lawsuit.

An executory devise of any chattel interest per-
sonal or real may be made to one for life with re-
mainder to a person in esse at the decease of the life-
estates-man - but the remainder-man after he has 2 Bl. Com. 1, 8
had the estate 21 years does not hold it by this tenure 174-598 400
but as fee simple if such was be of ~~real~~ ^{personal} property. 1 Pra. Ch. 274
And if J. S. devise a chattel real or personal as Feoffee
a lease or a life to C for his life and afterwards Co. Litt.
to the son of C. - The son of C will take even if he is 1st. Com. 544-6
not born till 9 months after the death of C and may
hold till he be 21 years as a remainder-man but
after that it becomes absolute in him and he may
alienate.

Who are able to make wills. - They are unable to
make wills who are in want of discretion or a sound
and disposing mind. The presumption is that the
testator had discretion and a sound and disposing mind
but if this can be rebutted by positive proof the court -

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Testators

Co. Litt 99

Loach 138-139

will set the will aside. — If a lunatic make a will it will be set aside unless made in a lucid interval. It is said by some that an infant male at the age of 14 & a female at 12 may dispose of personal property by will. Some say at 15 in both sexes. Others say at 17 which last is the time fixed by the Statute of Cornwall. If the ^{testator} make his will while in a state of intoxication it will be set aside. So if a man make a deed ^{or contract} while drunk Chancery will rescind the contract if advantage was indirectly taken of it by the other party. As to the proof of drunkenness there has been some dispute whether the court ought to found their judgment on the opinion of the witnesses. I can conceive, says my Lord Reeve, no impropriety in interrogating a witness as to ^{his} ~~the~~ ^{opinion} of intoxication and also ~~from~~ ^{what fact} whence he drew his opinion. A blind dumb or deaf man make a will if he understands signs &c so that it shall appear it was his own free act & will. otherwise it will be set aside. A will made under duress or restraint will be set aside. By duress here is meant unreasonable teasing and importunity in the last sickness of the testator. If the testator gets well afterwards and lets the will stand it will not be set aside. A case happened once says Judge Reeve when Justice was on the bench in the eastern district where

[illegible]

18
Hills

from them most of his estate. here the will was set aside.
In one instance where as the ecclesiastical chancellors
called it *pia fraud* was practiced the court would
not set the will aside. Where a man had great in-
fluence over the testator - so that the testator in ma-
king his will had given most of his property to him.
The son of this testator told his father ^{that} this man to whom
he had given his estate had been a bragging and
boasting what a dupe he had made of him &c. by
this story which was entirely without truth the
testator altered his will and gave his estate to
his son. The court established the will. ---

Traitors, felons, & suicides are incapable of making
testaments. There is no reason why an alien may
not make a will of personal property.

The last will of a testator revokes all former wills,
but a former will republished, so that the date of
it is latest, will stand - unless the former will
had been ~~repealed~~ by a second will. There has
been much dispute especially between Lord Mans-
field & Lord Camden whether one who is interested
in a will can be a competent witness. As if J. Niles
makes Tom Crake a legatee & he be one of the three
witnesses to the will. Our ^{superior} court have once or twice
decided that the legatee if he release his legacy is a
competent witness to testify to the validity of the will
in probate.

1 Day & Carr. Err.
Le Comben
the point
in fact
46
1 Burr. 414

But the Supreme court of Errors have reversed Execution
ed their judgement. It appears to be the opinion of Ex. John
Judge Reeve that the decision of the superior court
which was 3 to 2 was right. That ^{deaf} witnesses were com-
petent at the time of signing the will to testify to
the sanity, discretion and sound disposing mind
of the testator - that at that time they could have had
only a contingent possible interest. Suppose say
the judge that Deuben Stiles upon a sick bed & no
probability of recovering either has not made a will
or has made a will and given the whole of his estate
to John Stiles his only son and heir - John Stiles is a
witness to the deed which his father has of Blackacre
Deuben Stiles ^{brings an action} ~~states out a writ~~ of Ejectment against
Tom Baker who has taken unlawful possession of
Blackacre. No one can doubt but that John Stiles
is a competent witness to testify altho his possession
or non possession of Blackacre depends entirely upon
the event of the action. - A will of personal prop^{ty} 2 Bl. Com. 21
only is good if written & signed by the testator with 2
witnesses. So also it is held by some to be good if the
testator does not sign the will at the bottom - but begins thus I John Stiles give & bequeath &c. Some have said
also that a will is good even if the testator does not
put his name to will at all provided he wrote the
will with his own hand - & some have gone even farther than this

Will
Testament
Mortgage

It is stated by some elementary writers, that the principle is a dangerous one and not warranted by any adjudication whatever, that a will may be good as the personal property bequeathed in it and not as to the real - as if a will be signed with only two witnesses. But says the judge suppose a will of this kind was made giving to his three daughters his personal property amounting to 3000's value and to his three sons his real property value 3000's also. - Here the daughters would have the personal property exclusively and also their share of the real property under the Statute of distributions. This would be both contrary to natural equity and to the intention of the testator.

There would not the personal property here be considered as an advancement to the daughters and so the sons take equal parts of all the real property.

6. Lit 1.8 Who may be an executor or administrator

6. Lit 1.8 In general any person may be an executor or administrator except certain criminals persons excommunicated - alien enemies & all that are incapable of making wills or testaments. An infant even an unborn infant may be an executor - but cannot act till 17 years old before this time an administrator durante minority must act for the infant. In this State no one can be an executor till 17 years of age. at this age the Statute enacts that one may do the du-

duties of an executor could from this it is inferred **Executors**
that the executor at this age must give bonds for **Ex. Adm.**
the faithful discharge of his duty. But in all cases
if the executor after he comes to act proves to be a per-
son wanting discretion, a lunatic, an idiot or nat-
urally fool - it is the duty of the court to turn him
out and appoint an administrator cum testamento
annexo and as the case may be de bonis non. **More Carth.**
Poverty is never a ground of refusing a trust to an **417-8**
executor or administrator but in cases of insolvency **Shower**
where the ex. - or ad. - is greatly encumbered in debt the **293-4**
court will either compell them to give bonds or will **2 Vernon**
refuse them ~~them~~ the trust at their discretion. — **24**

All the acts of a minor executor in official capacity
are binding except acts which create a devastavit **Bro. Char.**
on the estate of the testator. as if the minor executor **490**
make a parole contract to release half the debt of ^{one of} the **More**
testators debtors - here the minor may take advantage **852**
of his infancy and recover the whole debt notwithstanding **5 Mich. 27**
his contract or promise to release $\frac{1}{2}$. For the executor in all cases
is answerable for the true value of the estate and if **Bro. Edw**
a devastavit is committed he is answerable out of **541**
his own pocket. A minor executor must sue and be **Bro. Jam.**
sued by guardian or prochein amy (next friend) as **441**
all infants do. A wife may be executor but with the **2 Bac. 378**
consent of her husband - If a single woman be appointed

1. *Municipal* executor ~~there~~ afterwards marries the charge
 Hills of trust will rest in the husband. The principle dif-
 ference between an executor and an administrator
 is that the former can ^{do} every act ^{immediately} upon the death of
 the testator which he can do after probate of the will and
 the giving of bonds except maintaining an action at
 law. Here the court must know his power but be-
 fore probate it is not known whether he has any power
 or not in the capacity of an executor. But actions
 1. Salk. which can be brought in his own name he can main-
 306 tain before probate of the will as if Tom Aches takes
 Off. of Ex. the testator's horse from the possession of the executor
 56. The executor may sue and recover in his own name
Municipal or *Duple* Hills have by the Statute of
Islands & Perjuria almost gone into disuse. And in
 this State says the judge it is believed they would not now
 be regarded. Formerly when the art of writing and all
 the learning was exclusively confined to the clergy they
 were very ^{frequent}. But of late the art of writing is so common
 Says the judge that in all my practice which has been a
 considerable I have never met with a person who could not
 write ~~their~~ ^{his or her} names except one woman whose paralytic
 complaint rendered it impossible. The necessity there-
 fore of *municipal* wills is entirely precluded. By
 the stat. 29th Car. II c. 5. *municipal* wills must be redu-
 ced to writing, read to the testator & be approved by him

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in the presence of at least 3 witnesses. The amount of Executors
property so bequeathed cannot exceed £100 - ^{including his last sickness} The will & c.
must have been made at his own house - unless surprised
with sickness a broad - ~~and at his last sickness~~ and
the property must all be personal.

As to what amounts to a Revocation of a will.

Burning, tearing, cancelling & obliteration are direct
means of destroying a will - as where a man made a
will - and afterwards rumpled it up and threw it in
the fire - it once who stood by snatched it from the
fire - it was torn a little and scorched so that it was
set aside. But where a man who had practised making
a will every year tore up one or two sheets of his will
which consisted of nine sheets and on being questioned
why he did so & told that he had not made out the last
years will as common - expressed some degree of regret
that he had torn it. This will was established - Every
thing which can be collected showing an intention in
the testator to revoke his will amounts to a revocation
or whatever can be construed into an animus revocandi.
It is otherwise ^{with} wills in which real property is concerned
a man on a sick bed having bequeathed to his nephew
a legacy enquired in a pet why his nephew did not co-
me and see him - and added that the legacy should
not be given to him. here the will and legacy was established
as to an implied revocation the same construction is

Revocation put upon the same act as used to be. It is stated
 in most elementary writers that marriage and the
 birth of a posthumous child amount to a revocation
 of a will. But does it ipso facto amount to a revo-
 cation of a will? It is the opinion of Judge Peck that
 it does not - It may be says the Judge that an estate
 was left out of the will on purpose for the wife and child.
 at any rate will or no will the wife will have her dower.
 The intention of the testator or what he would have done
 had he been alive ought always to be taken in to con-
 sideration. Some have gone so far as to say that ~~the~~
 in this case nothing short of a total disinherison of the
 child will amount to an implied revocation. This is
 not true. - It is the opinion of one - that to every
 will there is a tacit condition. - Where the testator
 having made a will bequeathing his personal estate
 to it and after wards gave a bill of sale of the same prop-
 erty to his wife - The court construed the last act (tho
 absolutely void in law) to be an intention to revoke the will.
 Where it gave to a feme covert (a married woman) a cer-
 tain legacy - and in another will says "whereas I am
 informed that a wife cannot take a legacy for her sep-
 erate use I give & bequeath it to B. Here the court
 said ~~the~~ had been misinformed - and therefore set
 up the first will. Tho a formal revocation of a former
 will destroys it utterly yet an implied revocation of

a former will - will not destroy a ^{subsequent} republication of Executors & former will. - at makes his will in which he disposes of all his real & personal property - he lives 10 years afterwards and acquires other real & personal property. So that if he had given all his personal property to his daughters and his real to his sons - The daughters by the will would take all the personal property which the testator left at his death - and also their share of the real estate not disposed of under the will viz the estate acquires after the making of the will - according to the Statute of distributions. There would be an inequality similar to that just before mentioned where elementary writers said that a will might be good as to personal but not as to the real property in the same will. [During the lecture this day a man stepped into the office and asked Judge Keene if he would be ~~some~~ good turn to him the Judge replied No - and the man withdrew - after he went out the Judge informed us that this man had applied to Col Tadmidge for the commission of Major in the 82nd Army.] Where two or more executors are appointed and one of them refuses to act the remaining executors may act without him. - This executor so refusing may afterwards and during the lives the other ex. be admitted to act. The names of all the executors whether all act or not, in any suit by them instituted must be joined. But in any suit brought against the executors the names of all or only of those that act

Devolutum in the capacity of executors may be used by the
1st. pl. plaintiffs at their pleasure. Where there are two
 executors and one refuses, afterwards the other dies
 the one who refused cannot then be admitted to act
 but an administrator cum test. annexo. must be ap-
 pointed. Where there is but one appointed and he dies
 or refuses - here also an ad. cum test. annex. must be ap-
 pointed, unless by his will he had appointed his exec-
 utor. - In this case the last executor will be executor
 to the first as well as second testator - unless he refuses
 to act as executor to the first. A dies ~~having~~ appointed
 B & C his executors - B dies and appoints D his executor
 then C dies and appoints E his executor - here E the Ex-
 of him that died last ~~shall~~ in exclusion of D be the
2d. pl. executor of A the first testator, but if E refuses then
 D cannot take but an ad. de bonis non must be
 appointed. Or if C dies intestate an ad. de bon. non must
 be appointed for the administrator of C cannot be
 ad. of A also. What amounts to a *devolutum*. An Exec-
 utor is bound to use ordinary care with the goods or estate
 of the testator and is liable for ordinary neglect. Thus
6th. pl. if he suffers the goods of the testator to be taken away
1st and will take and follow the advice of the ordinary or use
6th. 2d such discretion for recovering them as men of for-
 dener would do. or if he spends the goods for his own
 personal use. Or if he under sells the goods, or uses fraud

in releasing a debt - it is devastant in the executor. Executors
and he may be sued by the creditors - on the bond. 66-181
Suppose the executor release a bond to a debtor or re- 180.
then suppose the executor makes a contract with the 66-158
debtor to release to him his debt in consideration of a
shilling or the like. and in a suit by the creditors pleads
plene administravit (which he can do if he has no assets
in his hands) can the creditors to the estate come against
this debtor for the surplus which was released? They can. 1 Hen. 4th
If the Executor pays up an usurious bond it is ~~in itself~~
by some old authorities, that it is devastant - But by
Modern authorities, it is devastant to no greater extent
than the surplus above lawful interest. So that the ex- 11 Hen. 10;
ecutor may pay 6 per cent lawful interest on any
usurious bond or note - besides the principal and it shall
not be devastant. So in a bond time after the time for
the performance of conditions is elapsed, by the old author Gro. Car.
ities, the executor must take the whole penalty or it will 490
also be devastant. but this is dispensed with since the
courts of Chancery and courts of law will not suffer the whole
penalty to be taken the the conditions be broken. If the
Executor in lieu of the testators bond against his debt- 12 Hen. 10
or take a bond in his own name or accept a draft or
bill of exchange or in any manner changes the secu- 181
rity he does it at his own risque for from that moment
he is answerable for the whole bond out of his own personal funds.

Devastavit. But he may take a new bond in the name of the testator or in the capacity of Executor and it will stand upon the same ground as the former. The issue of wrong must be connected with *devastavit* in order to make the executor liable. Thus where the executor on the testator's ship-load of cotton arriving in port took the advice of several Merchants and thereby delayed selling the same till the price of cotton had fallen by a sudden influx of this article the court held that it was no *devastavit*. If the executors leave any matter of fact or the like to arbitrators the creditors may in courts of law plead that their award was less favourable to the executor than the court would allow. And if this plea is made good the executor is bound by the decision of the court & jury. Accidents such as the inevitable loss of bonds or other property will not subject the executor to personal loss by it. but where bonds are lost he can recover in Chancery by proper witnesses &c. Suppose that where there are two executors one has committed *devastavit* or otherwise wronged the creditors or legacies and the other has in every respect done right must the action be brought against both or only one? An action may be brought against the former alone as a tortfeasor. The form of the ^{Summons} writ which goes out against the executor - after being directed to the sheriff &c begins thus - *Summons Ad. Ex. of the last will of J. S. to ap. &c*

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If the executor recovers in an action against the exec. Executor
the execution goes out *de bonis testatoribus* - if the Ex. adm.
Executor does not deliver up the goods of the testator then *inquisitio*
upon a writ of *scire facias* execution will go out *de bonis testatoris*
proptius. It has been questioned whether the Statute of *limit.* 39
limitations ought to be construed to exclude the claims
of the executor to the estate of the deceased. The difficulty
of deciding the question has arisen from the enormous
ground of supposing that the Statute reduces to ascertain
the presumption of the Common Law. Thus such debts are
presumed to be paid within 6 years from the time they
were contracted. But this is not the true principle upon
which the Statute of limitations are founded. They
are founded upon principles of policy - viz. to prevent
people from neglecting their accounts &c till they be-
come half buried in oblivion & to prevent endless litigation.
It is now settled that the executor is bound to pay
all those debts which would as to a living person be *probat.* 55
barred by the Statute of limitations. If a testator had di-
rected in his will that the debt due to some person be
paid - the presumption could not be that the debt was paid
altho it had run out by the Statute of Limitations, and
where the deviser directs in general terms that all his
debts be paid there are no grounds for a presumption that
the debts void by lapse of time were paid - nor that the test-
ator did not mean to pay them. Where debts of a living man

Interest } have become void by lapse of time - they may be made
 upon Debt } valid by a new promise - either private or public as if
 one advertise in a newspaper that he will pay all his debts.
 Thus an executor pay interest upon debts that are
 due at the testator's death - no interest being expressed
 on the face of the instrument. It is evident that
 debts due from a living man - either on bond or liquidated
 accounts are upon interest whether it is expressly stip-
 ulated or not. But in this respect the executor does not
 stand exactly in the place of the testator: for he is sup-
 1 Br. Ch. posed to be ready to pay the debt at any time when called
 659 for. Therefore the law does not compell him to pay
 interest upon a debt or a legacy between the death of
 the testator and the end of the year - nor even then till
 the debt be called for. But if it can be proved that the
 the Executor laid out the money or made use of it the
 executor will be liable to pay interest upon the debts &c
 1 Br. Ch. 188 When the testator dies while an action against him
 2 Vent. 218 is pending before the court - Execution cannot go out a-
 gainst his body but against his property and the executor
 is obliged to deliver it up.

Adornment is what a child takes in the lifetime of
 the testator from the estate of the father as a portion.
 So provision for one by his uncle or his mother if his
 father be living at the time - nor by any one but the father
 will be considered an adornment. In England

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the money that is laid out in the education &c. &c.
of a child above the necessity of a school, &c. &c.
cannot more properly be an office of the dead than
it is otherwise in other states. What a parent
has charged in his books for the child for
his education in an university is an advan-
cement. of a child's gift without a valuable
consideration is presumed to be an advan-
cement but this presumption may be rebut-
ted by parole proof - & money laid out for the
expenses of a journey or for the restoration of
health is no advancement - & when the testator
dies. For one of his children, & a part of gift
to the others, will the in unequal proportion
in case of a failed legacy it shall be distributed
equally - the same as if they had received equal
shares before.

[Faint, illegible handwriting, possibly a list or ledger, covering the majority of the page. The text is too faded to transcribe accurately.]

Bailments

Bailment

Bailment is the delivery of goods on ~~a contract~~ ^{express or implied} condition that they shall be ^{redelivered to the bailor} returned to the Bailor, when the purpose for which they were bailed shall be answered. 2 Bl. Com. 455 Joneson bail 3-48

Every bailee has a special, qualified property in the thing bailed - The lawful possession gives a special property in the goods bailed - If a common carrier has been upon the goods carried until paid for his services. - so the finder of goods may maintain an action of trover against any person having the goods except the owner. - 4 Bl. Com. 240 1 Bac. 240 The Bailee is responsible for the goods delivered unless it may be made to appear that they were not lost or damaged by any fault of his - he is bound to restore them when called for. There are three circumstances from which his responsibility is to be determined viz. 1st The nature of the bailment - 2nd quality of the thing bailed - 3rd the conduct of the bailee. Upon the true principle of bailment the bailee is bound to keep or use the goods of the Bailor with a degree of care proportioned to the nature of the bailment under all the circumstances required Ordinary diligence or care is what rational men in general use in the conduct of their own affairs or what men of common prudence exercise towards their own property

Bailment So that there are reckoned three degrees of diligence
in general viz ordinary & more than ordinary & less than ordinary
 and it must be left to a jury to determine ^{which} ~~where~~ which
 of these degrees the actions or omissions of the bailee
 are to be considered — To each of these degrees there is
 a correspondent degree of fault — The omission of that
 care which a careless thoughtless man has towards his
 own property is more than ordinary neglect it is
 gross neglect & gross neglect is *prima facie* evidence
 of fraud in the bailee — this *prima facie* evidence of
 fraud may be rebutted by proof of gross neglect of this
 Bailee's own property — The rules to determine the
 responsibility of the Bailee are the 3 following viz
 1. *Law 247 - L. Eng 15* 1 When the benefit of the bailment is for the bailee
Jan. 21-2-32-51-5-64 the Bailee is not liable for slight or ordinary neglect
 5-101-4 *Loke 85^b* but only for gross neglect — In the case of *Southcott (ex Loke)*
L. Eng 910 this was (without authority or principle) regarded as law — the
Jan. 21-3 principle as laid down in *Loke* has been ^{often} denied to be law
 in all the cases and rules which have been cited and are to be
 considered. express agreements may alter the responsibility
 of the bailee — 2nd When the bailment is for the ben-
Jan. 15-16 efit of the bailee he is liable for slight neglect the
 33-89-90-91 maxim of the law being "qui sentit commodum sentire
 debet onus" he who feels &c — 3rd Where the bailment is
Jan. 14 11-15 advantageous to both the Bailee and bailor — the obliga-
 tion is said to hang on an intermediate — here the

bailie is bound to use ordinary diligence and care --

In most of the books there are reckoned 6 kinds of
 bailments viz 1 *Depositum* Where the Bailor de- L. Ray. 912-5
 livers to the Bailee goods for the benefit of the Bailor but not
 without reward to the Bailee. This called a natiue bail-
 ment and the bailee sometimes called bailee but more
 properly depository 2nd *Commodum* or gratuitous
 loan of goods to be used by the bailee - as where one lends L. Ray. 915-5
 implements of husbandry - or where one lends a
 horse gratuitously. The bailor is here called the lender
 the bailee borrower - This being a loan for use differs
 from the *mutuum* or loan for consumption as Dr & Hud. 129
 where one lb of flour is lent to receive another - not
 properly bailment because not the specific thing lent 1 Bac. 241
 3 *Locatio & conductio* - Where goods are delivered to the
 bailee for his own use paying reward - as where a horse Ray 913
 is hired at a stipulated price per mile. 4th *Vadium* - where
 goods are delivered as a security for a debt due from
 the Bailor to the Bailee here the goods are called the pawn L. Ray. 915
 the bailee - the pawnee. 5th *Locatio operis facieidum*
 Where goods are delivered to the bailee to carry something
 or do something with - with reward to the Bailee L. Ray. 913-7
 as the delivery of cloth to a Sawyer to make up into
 a garment - goods entrusted to Bailiff, factor, Broker &c
 6th *Collanatum* - Where goods are delivered in trust as in 915-918
 the last case but without reward - the Bailee called Mandatary Jones 73-

Deposits

Lon. 50

This division of bailments the neither precise nor logical was so in the Roman law and from that Bracton, Holt and others have copied it - a better division would be by putting those cases of bailments together which require the same degree of diligence in the bailee.

Ray 913

Mr 1099

The Depositary is bound only for ordinary diligence or liable at most only for gross neglect - and ~~when~~

Lon. 52 64-5

1 Ric. 247

1 H. 11. 15-8

Bo. 5. 37. 2 H. 11. 87

Ray. 914-6 55

4 Leon. 200

Lon. 52 Hen. 245-6-394

Ray. 655-911-915

Mr 1099. Com. 733

Bo. 8. 79. 16485

Bo. 11. 815

4 Co. 84

Ray. 914

Lon. 51-4

this liability for gross neglect may be rebutted by the bailee proving there was no fraud - that is he is not liable when he treats the goods better than he does his own - so if a bailee be a drunken careless fellow & leaves his doors open nights he is not liable for break & goods stolen but the bailee may bind himself to any extent by express agreement - Tho the decision of Southcotes case is right yet the other cases should have been denied to be law by many as in Ray. 914 Bo. 8. 79. 16485⁶ It was formerly held that delivery was not sufficient consideration for the performance of the agreement but this is now exploded - There has been a strange contrariety of opinions on the other case stated in Bo. 85⁶ concerning the liability of the depositary for goods locked up in a chest the key being with the bailee. Coke says he is liable Holt says he is not - Mr Gent says neither of them is correct - that the law of bailments was not then well understood - that the true criterion is whether the depositary

know the contents of the chest - If he be considered as li-
 -able for the contents of the chest it is necessary that he
 know the quality and value thereof that may bestow
 care and diligence accordingly - and if he be ignorant
 of the contents he is not liable unless for gross neglect
 in the case of the chest and not even then for the contents. 7 T. Rep. 705
 because he cannot be considered bailor for things as to
 the existence of which he is ignorant. - In case of
 a promise to keep them safely he is not liable for Jon. 623-5
 all events - no accidents by the act of God - by force - Reg. 915
 wife to keep them safely he does not ensure them Ex. 4. 130
 against accidents nor loss by evidence as in case 1 Per 248-9
 of robbery unless fraud be proved - but he is li- Hob. 54
 -ble for simple theft because that may be guarded
 against by vigilance - The same is the case here
 as when a lessee engages to defend the lease against mo- 1 Com. 220
 -tation, let &c the lessee is ^{not} liable to make satisfaction. 1 Hol. 128
 for common trespasses unless the trespasser claim title to the land &c
 - If the depository detain or refuse to
 give up the goods deposited on demand he becomes
 liable to an action of trover ~~or~~ conversion or assumpsit
 If a horse be bailed the bailor may sue for horse money to Jon. 114
 pay for keeping. - II Lending and Borrowing -
 II Accommodatum is where the advantage is to Ba. & P. 72
 the Bailee only. - Here the bailor is liable for ordi- Bac. 244
 -ary neglect or to more than ordinary case per 249-50

Lending & Borrowing He is liable generally unless he can prove extra-ordinary care on his part - the onus probandi being in the bailor or borrower - Thus the bailor is liable for theft *prima facie* but not for such as he cannot resist as Robbery &c unless imprudence be proved by the lender or bailor - not for acts called inevitable provided there be no breach of trust - but if there be a breach of trust he is liable for inevitable acts as if the borrower ^{of a horse} cross a ferry ^{with him} in a tempestuous time notwithstanding advice to the contrary - this being an act of imprudence will subject the borrower in case of the loss of ^a horse in crossing - Or if the borrower of ^a horse go a different road from that which is specified in the agreement he is liable for ^{all} inevitable accidents in an action on the case or action of assumpsit

18 Reg. 257
 18 Reg. 915
 18 Reg. 244
 257-8 -
 6 Reg. 244
 18 Reg. 253

III Lending and Hiring is where goods are delivered to the bailor with reward to the bailor to be used by the bailor

The bailor has a transient qualified right of property and the bailor an absolute right of use and reward - In this case the advantage being to both parties the bailor is liable for nothing less than slight neglect or is bound only for ordinary care - Bracton & Holt are incorrect when they say the bailor is bound to the utmost diligence - perhaps they had no definite meaning for what they called utmost diligence and it is believed that they meant nothing more nor less than

18 Reg. 119
 18 Reg. 915
 18 Reg. 251

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ordinary diligence - as the superlative in Latin is *Bailement*
~~transferred~~ into ^{the} positive in English as *levisissima culpa* Ray. 916
meaning slight neglect The opinion of Holt seems 1 Prec. 251
nothing more than a dictum - is not founded on any
judicial decision has not been & is not now considered Ray. 916
as law Hence the goods are to be kept & used with ordi- Jones 146
nary care - robbery will prima facie excuse but theft
not - Tho' this is the most common bailment ex-
cept that of the 5th kind there is less law & fewer de-
ceptions open at than upon any other bailment.

IV Pawn or Pledge is a security of a debt due from the
bailor to the bailee - (the word bailment is frequently u- Ray 913
sed to denote the thing bailed) - It is a mortgage of 1 Prec. 237
personal property & the general principles of mortgage 4 Com. 238
(properly speaking) will apply to this kind of bailment

So whatever engagement on the part of pawnor will 1 H. Br. 114
preclude him from redeeming the pawn - Once a pawn Ray 917
always a pawn is the maxim of the law - its benefit 1 Prec. 232
is to both parties the pawnor is bound only for ordinary 1 H. Br. 23
care and not liable for slight neglect - Coke says in
the case of Southcote that the pawnor is bound only to
the care and diligence which he uses towards his own
property but this opinion of Coke is not supported by
authority nor considered as law - so it is held in the Jon. 106-7 - & in
same case that the pawnor is not liable for theft - & Jones L. Ray - 918
holds that he is liable prima facie - but seems to contra-

- Pawns - dict it where in the case of a borrower he says he is
 Philpotts - liable unless he prove extraordinary diligence.
 Ray. 913 - With opinion of Mr Justice that this is a matter of
 Salk. 522 - fact to be tried by a jury. Robbery *prima facie* will
 1 Bac. 257 X 242 - excuse the Pawnee. - After payment of the debt or
 Ray. 916 - ^{when due} tender, sufficient to redeem & pawn the qualified prop.
 Cro. Jam. 244 - erty determines and the pawn is (in case of refusal
 Jones 111 - to deliver it) vested in the Pawnee as a *depositary* - &
 4 Car. 83^b - if he (the Pawnee) retain it he is a wrong-doer and
 Exp. 625 - liable not only for every inevitable accident but for
 1 Pow. 253 - an action of trover (which is the most usual) or of as-
 Salk 441-523 - surpsit - upon an implied promise. There is one
 1 Bac. 257-8 - rule in this kind of bailment which will not apply
 Cro. Jam 241 - to the other kinds nor to mortgages viz that upon the
 Dal. 86 - Pawnee's refusal to deliver up the pawn when the
 Earth 277 - debt is paid or tender made for the same (for after refusal
 1 Bac. 243 - of the pawn the lender must not leave the Pawnee's hands the
 2 Hawk. 211 - pawn is liable to an indictment at C.L. for an offence
 Salk. 522^x 379 - the law being jealous of oppression on the part of the
 Jones 111 - creditor (Pawnee) - as the delivery of redemption might
 Dal. R. 12 - ^{and usually is} have been secret - or the pawnor might have been
 Cro. Jam. 244 - embarrassed - The pawnee is the depositary of the
 1 Bac. 257/8 - money so refused. Where the pawn may be used with-
 out injury the pawnee may upon a presumed con-
 sent use such pawn - but at his own peril - that he is
 he is liable to answer for injuries even if inevitable.

This right of use is said to be founded upon a presumed **Bailment**
consent of the pawner - but the presumption must **Reg. 917**
exist or not exist according as the pledge is likely to **Jones 112-3**
be made better or worse. Mr Gould doubts whether **Lok 522**
there is any implied consent - But in case the paw- **1 Inst 80-85, 7**
nee is at expense in keeping a pledge it is matter of **Exp. 625**
justice that the pawnee use it enough to discharge **Jen. 112**
the expense - so that there is no need of presumed consent
and in the Roman Law the pawnee was to account **Jen. 115-115**
for the benefit or profits of the pawn - not so in the Code **Reg 917**
yet where use more than reasonable for expenses or **5 Bac. 257**
where injury is done to a person the pawner may **1 Com. 221**
maintain an action of trover and conversion a-
gainst the pawnee. Most of the rules and distinctions
which will apply to pawns are applicable to goods
found - that is, as to the degree of care and diligence
required - In *Brooke* it is said that the finder is not li- **Bro. Lib. 217**
able for negligent keeping but this being an older case **Reg 917**
stated is ^{not} considered as law - & Holt himself says that **1 Pw. 252**
ordinary care is required by the finder - tho the case in **Ch. D. 599**
Brooke is correctly decided because an action of trover will
not lie for neglect in keeping yet by the older opinion the
finder is liable only for gross neglect and is in the
same state as the depositary. But the depositary is se-
lected ^{by the} bailor & is fiduciary whereas the finder is not se-
lected nor can he be considered fiduciary seeing there

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Finder & Pawnree is not, nor can be any privity between the owner and finder - The finder being voluntary in whatever acts he does to the goods found is under obligations to use or ordinary diligence or let the goods alone - as to the expense which the finder may incur by ordinary diligence there is no doubt but that he may be compensated

Stat. tit. Edwray, passed for the keeping in Connecticut - for he is here liable for ordinary neglect - but by the Common Law he has no lien upon the goods & is liable to be subjected in an action of trover whether he be remunerated for his expense or not - and the finder cannot by any principle of the C.L. maintain an action for his trouble or expense - he cannot maintain an action for lost because the owner has done no wrong - he cannot - on contract for by a well established principle in law no one can lay another under an involuntary contract - unless where compellable by law to pay what the law demands. It is the opinion of Mr. Gould that at common law there is no remedy to imply a contract or assumpsit where there is no privity between the parties is not a principle of Law

2 Bulstr 312 The refusal of the finder to deliver up the goods found
Exp. D. 591 is not conclusive evidence of conversion & delivery cannot be justified in finder unless sufficient evidence of ownership be produced & whether the evidence be sufficient or not must be left to a jury.

But if he retains the goods after sufficient evidence he is liable to be subjected in an action of trover & conversion.

Bailment

1 Esp. B. 590

It has been decided in this State (the erroneously settled point) that where A found goods belonging to B and C by fraud and perjury obtained them by a judicial decision, this will not bar B's claim upon a finder provided he bring

sufficient evidence of ownership. There are several a-

3 T. Rep. 125

analogous cases which would go to prove the incorrect-

2 Bac. 11

ness of this decision - as if an executor or admin-

1 H. Bl. 669-682

istrator under the authority of a false will or false

Long. 101

letters of administration obtain a debt of the testator

Coche's Dec. L. 307

by a judicial decision - it will forever bar the true

2 H. Bl. 408

executor or administrator - proved to be so from an ac-

tion against the debtor who has once paid - but if the

debtor voluntarily pays - that is - without judicial pro-

ceedings he is liable to pay the rightful executor or

administrator notwithstanding - so also if a debtor

voluntarily pays a bankrupt known to be so he is lia-

ble to pay the debt to the assignees of the bankrupt not-

withstanding but it is otherwise if the debtor be compelled

1 Bac. 258

by actual judicial decision - excepting where this deci-

1 Inst. 209

sion is ~~barony~~ the sea. - But to return to pawns

Salk. 525

If the pawn or pledge be perishable and actually pe-

Long. 619

rish or decay the pawnee shall not thereby lose his

3 Burr. 1754

debt but may have action for it on the pawners.

1 H. Rep. 565

Even while the pawn remains with the pawnee -

777
 Pawns the pawnee may have an action for the debt due
 Str. 919 unless there be an agreement to the contrary. The
 6 Sp. 286 same is the case in respect to mortgages.
 2 Lev. 116 - 10 Mod. 79 If the debt be not paid at the day agreed upon the
 1 Bac. 238 property of the pawn becomes absolute in the pawnee
 Shep. Touchston. 106 at law but the pawnor or owner shall be allowed
 5 At. 395 - 10 Mod. 205 redemption in equity - as also in case of mortgage
 2 Vern. 691 - 8 Factors in foreign countries may sell the goods in
 Str. 1178 - 5 Shep. their care but cannot pawn them because it is a
 222 - 1 H. Bl. 562 rule in law that no can pawn what he cannot alien.
 4 Com. 327 - Brooke in his own right - The factor has a lien upon the
 1 Anns 99. goods but he cannot transfer that lien. The pawnee
^{the pawnee} if not redeemed within the limited time may sell the
 pawn but equity will give the pawnor the surplus. -
 1 Inst. 205 It is otherwise with mortgages for the mortgagee may
 have his action against any assignee of the mortg.
 as well as against the mortgagor himself.
 4 Com. 205 It is said in Comyns ~~that~~ that the pawnee may even
 Owen 124 sell the pawn before the day limited for redemption. but
 Bulst. 295 the case cited is one where the the pawn was sold before
 yet the pawnor neglected to present the annua bill after
 5 J. Rep. 600 the limited time of redemption. Therefore the opinion
 1 Inst. 8 in Com. is not ~~law~~. The lien upon personal prop. is fiduciary
 12 Ch. 12 The pawnee cannot forfeit and pledge by any criminal
 6 Cr. Cas. 556 act - he may forfeit whatever he is capable of conveying
 Moore 116 in his own right. The pawnor may forfeit by criminal acts

750

but the pawnee is entitled to the amount of the debt Pawns in
out of P. pawn. The principle difference respects Bailments
the property between a pawnee & mortgage is 1 Bac. 258
that **the** former is fiduciary the latter not, for Yel. 179-4 Com. 259
real estate is conveyed by a public conveyance and 1 Bulst 29-Hea 259
the mortgage cannot so easily be a fraud. — 2 Term. 691-8
a pawn cannot be taken in execution for a debt 1 Bac. 258
of the pawnee — The pawner may in case there be 2 Dion. 50- Yel. 164
no limited time for redemption, redeem the sum either 1 Hen. 39-4
before or after the death of the pawnee but the execu- 4 Com. 258
tors or administrators ^{of the pawnee} cannot redeem after P. pawners Yel. 178
death. If tender is made for the redemption of the pawn 1 Bulst 29
after the death of pawnee it must be made to the executor 2 Lick. 19
or administrator even if the pawn had been alienated to a 1 Geo. 2 Am. 244
third person and if this third person refuse to give it up
he shall be liable to an action of trover. Some have held Yel. 178
that if the pledge be upon a valuable consideration the 1 Bac. 259
pawnbroker (or pawnee) hath a special property in it &
may assign it to a third person and in this case the
tender must be made to the assignee. But in 4 Com. 259
case there be a limited time for redemption it may 1 Bac. 259
be redeemed at any time before P. limited time expire 1 Bulst 29
even if both pawnor & pawnee be dead.

The 5th Kind of Bailment is where goods are deliv-
ed to the bailee to carry something or do something
with — with regard to the bailee — The bailee may be

5th Kind

either a private person or a person exercising some
 Law. 254 public profession. 1st as to Bailees of a private kind.
 Reg. 918; Jan. 30-128 such as mechanics, Brokers, Factors, Postiffs &c the ad-
 1 Mod. at 4 Moor 543 vantage being, to both parties the Bailee is not li-
 12 Mod. 487 able for any more than ordinary neglect ~~and~~ bound
 1 Vent 141 to nothing more than ordinary care - as with the
 1 Inst 89; 4 Gt. 84 pawnor he is not liable prima facie for robbery but
 1 Holt 151 - Reg. 918 in case of theft he is liable prima facie, the onus
 2 Lev. 5; Jan. 138 probandi lies upon him - he must show that he did
 1 Mod. 4 - 1 Vent 131 use ordinary care, as if the property be locked up
 &c he is excused. There is a difference between this kind
 of bailment and a mutuum where the thing delivered
 is to be so transformed or changed that it cannot be id-
 entified as where silver is delivered to a silversmith to
 be wrought up - here this identical piece of silver be-
 comes absolutely the property of the smith and he is answer-
 able for its value at all events - So if one should take
 a bagful of wheat from another's house according to the
 rule of law the owner may take his property wherever
 he can find it provided he do it peaceably without violence.
 Yet if the wheat be grown the owner cannot take because
 it cannot be identified - If the thing be so be detained
 by the bailor's lord or master the bailee is liable because
 it amounts to ordinary neglect in suffering it to be
 so exposed to be distrained - as to the professional
 skill of the bailee - he is to use such care as the

law requires. 2nd The work is to be skillfully performed Bailment
as when cloth is delivered to a tailor to be made up in. 3 Bl. Com 166
to a garment if the work is not done well he is liable 11 Co. 54^a
for damages - but if a man be required to do a thing 1 Akrid. 354
which is not in his line of business or profession the
law implies no skill and the bailee will not be liable Jon. 157
unless by express agreement - as one delivers cloth to
a shoe-maker to have a coat made, the latter is not liable
for unskillfulness. But a Tailor holds out an implied en-
gagement to make a coat with skill. Ordinary care
does not include insurance against fire for the
law does not make it the duty of the bailee to
go to an insurance Co. and take out a policy of in- Jon. 141-2
surance. Therefore it is not his duty to insure the
articles bailed against fire. And if the work be partly 3 Bur. 592
or wholly done the bailee in case they be burnt can
have no action against the bailor for ^{the} work.

2nd As to persons exercising some public employment
as common carriers, masters of ships, innkeepers
common Stage-men or such carry for hire - Forgersmen &c.
They formerly were liable for nothing less than or- Jon. 144-5
dinary care - but now they are liable for all loss ex- 1 Co. 84^a
cept loss by the inevitable providence of God - the Kings
enemies & the acts of the bailor. This is found in public Bay. 918
policy as there are many inducements, many opportunities
of fraud, collusion and combination. His responsibility 3 Bur. 1593
1 East 209

carriers is ~~great~~ left by his frequent dealings with strangers he com-
 1 N.R. 27 - 4th 18 time with swindlers & robbers to the injury of the bailors.
 1 H.B. 281 - 4th 485 Coke says the carrier is not answerable to this extent
 Exp. d. 621 - 1st 604 when he carries the goods gratis - but the carrying goods
 gratis will bring the bailor under another head.
 1 T. Rep. 33-34 By an inevitable accident is meant such an one
 Str. 128 as could not have happened by the act of man as
 2 H. Bl. 113 tempests, lightning &c - therefore loss of goods by fire
 Dyer 66 not occasioned by lightning or some other inevitable
 Exp. 620 act of God will not excuse the common carrier - It
 B. & P. 70 is said also that the master & owner ~~are not~~ liable for
 1 Wils. 281 goods destroyed by Rats and mice ^{even} where they gnaw thro
 Jan. 147 8 the vessel. 2nd class of the common or Kings enemy
 1 Kent. 239 do not include rioters or insurgents or what in
 1 T. Rep. 18 England are called fresh water pirates or robbers -
 1 Ch. d. 85 common pirates or pirates upon the high seas are
 Exp. 620 considered common enemies. 3^d the common -
 B. & P. 74 carrier is not liable for losses occasioned by the acts
 Exp. 621 or faults of the owner or bailor - as where A put into
 2 Show. 107 a waggon a cask of wine and the wine being new fermented
 1 Bac. 344 and burst the cask or where the carriers waggon was full
 but was urged by the owner to carry against 5th carrier
 will - in these instances the carrier was discharged from
 his liability - Yet ^{in these} instances the carrier might by gross
 neglect or fraud become liable, not however to the extent
 to which common carriers are in general liable.

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If the common carrier be under the necessity of Bailment
destroying the goods - such necessity arising from an evil & an
inevitable act of God as throwing the goods overboard - 1 Roll. 56,
in a tempest and the like - the carrier or Hovmren 12 Co. 65
is excused the same as if the loss was occasioned by 1 Bac. 345
the immediate act of God. That is he is not liable 2 Bulst. 280
in the character of com. carrier nor to the whole amount. Bol. Leach. 148
of goods lost - Yet if the Master or Carrier voluntarily 2 S. K. 407 - 1 Esp. 220
or rashly exposes the goods to danger by putting to sea in tempestuous weather he does it at his own 1 Str. 128
risk and is liable in this case even for inevitable 1 Esp. 621
accident. In order to render the common carrier lia-
ble for loss, the loss must have been while the goods were 1 Esp. 621
in his possession or under his immediate care - as if 1 B. & P. 70
the owner or bailor sends a servant to take care of 2 How. 527
them here the Master or Carrier is not liable to the whole 1 Str. 690
amount to which a common carrier is - yet he is liable 1 Cro. Jam. 350
if the loss is occasioned by his putting to sea in a tem- 1 Rob. 1
pest - or with a vessel not seaworthy or leaky - that is
he is not liable for neglect or oversight. There is a
difference to be observed between the committing of goods
to the care of a common passenger & the sending a ser-
vant on purpose to take care of them - in former case
the master or carrier may be liable when in the latter
he may not be. Tho the carrier be ignorant of the 1 B. & P. 70
contents of a certain box or bag he is liable for loss 1 Esp. 128

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 Carrier unless he be discharged from liability by special
 Ex. 622-46.2298 exception - which exception he is at liberty to make.
 Jon. 148: 145 so far as is reasonable or he may even refuse to carry
 Carth. 485 the goods if the owner either by fraud or obstinacy
 1 Bui. 344-52.180 will not pay in proportion to the value and risk
 1 Bui. 1370 And if a common carrier being tendered his hire re-
 3 Bl. Com. 166 fuses to carry goods without good reasons he is
 Hard. 163 liable to an action on the case - The same rule is
 applicable to Tavernkeepers whose sign implies a con-
 tract to accommodate Strangers &c when convenient.
 Common carriers are always presumed to have conven-
 iences for carrying goods of any value with safety -
 They are not in general anxious to know ~~to know~~ the
 contents - they never suppose any intentional conceal-
 ment of the value - so that they are evidently different
 from a depository - There are two cases in the books
 Allen 98 of a carrier being subjected for loss of goods where
 1 Vent. 238 the owners wilfully and intentionally concealed their
 3 Keb. 135 value - viz where a box containing a large quantity of
 1 East & Ald. 130 money was said by the owner to contain silk &c.
 1 Corn. 213 These are flatly repugnant to the dictates of common
 4 Burr. 2300 sense - are unreasonable rules and have since been
 14. 147 overruled reprobated and denied to be Law by Mansfield
 1 East 610 & King - The reporter having added to the case in *Al. quere*
durum &c circumstances - Mansfield says had he been
 there he should have been of those *ipse durum* &c

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The carrier need not personally inform the owner of his terms for the purpose of making special exception, provided the terms be made public by advertisement. The general rule is this - that unless a general exception he is liable for all he receives unless the value be concealed by fraud - but if he make a special agreement or special exception he is liable only for so much as he has reward for carrying - as to the surplus or what he carries without reward he is not a common carrier but another kind of Bailee as if the value of the goods to be carried was represented to be 200*l* when it was 400*l* the carrier is not liable because fraud was practised by the owner - so where the master of a coach or stage receives fare only for the passengers and not the baggage he is not bound the extent of a common carrier or rather is not with regard to the baggage considered as a common carrier - So make the carrier responsible it is not necessary ~~that~~ that the bailor pay or expressly promise to pay for carrying - but the law will imply a promise The Carrier is liable untill the goods are delivered at their place of destination or to the consignee unless he can show that the custom is otherwise. If it be the custom to deliver goods in a place of safety & the carrier have a store of his own and they be taken from it there he is not liable in the character of a Com. Carrier

Bailment

B. & P. 71

Ad. 4 Burr. 2298

Carth. 485

Exp. 622

Carth. 485

B. & P. 701

1 H. Bl. 298

Comy. Rep. 25

Salk. 282

B. & P. 70

Salk. 282

2 Show. 128

1 Bac. 343 5

2 Bl. Rep. 411

3 Wils. 429

Exp. 623

43. Rep. 481

Exp. 623

82 52
Postmasters ^{of the ships} Owners liable for goods lost in ships or vessel - By
Exp. 623 Act. Geo. II they are liable only for the ship and
Salk. 440 Freight when the goods were lost by the mis conduct
1 Ship. 78-18 of officers on board - - The action must be brought
Act. 62 against all the owners - As the contract is made
5 Tr. 651 either expressly & personally, ~~with~~ or impliedly thro some
5 Tr. 2611 agent with the owners they must all be joined ex
Salk. 440 quasi contracta - and non joindre can be taken ad-
vantage by plea in abatement - - - -

Salk. 17 All lib. Postmasters were liable as common carriers
L. Mag. 646 for any one might be postmaster - Since the estab-
L. Mag. 64 lishment of Post office - (which was at the restoration
L. 755 of Char. II) postmasters are not liable except where
3 Wils 442 they are personally in fault - they are not answer-
Salk. 800 able for the neglect of their subordinate officers - as
1 Sedw. 245 stage drivers or carriers of the mail - but in this
Star. 485 case the carriers of the mail are liable for their own
1 Bac. 343-348 neglect - Even contracts by deed where the benefit or
3 Mod 227 for hire goes to the government are not good against
Salk 655 losses - If they are guilty of misfeasance they are
Exp. 57 liable to an action of trover - for other faults they are
Hob. 257-260 liable to an action on the case.

Jon 132-4 Goods delivered to an Innkeeper are ranked under the
68: 273 2 division of the 3rd kind of bailment - Exp. 656 is
Exp. 656 not correct in putting this kind of bailment under the
house of accommodation or lending and borrowing -

453

1st Because they are not kept gratis & 2nd because they Bailment
are not to be used by the bailee. An Innkeeper is Innkeeper
any one who makes it his business to accommodate &
provide for guests. In England any one may be an Innkeeper 177
Innkeeper at his own will - but in Connecticut Palm 574
Innkeepers must be appointed by the civil authori- 2 Hal. 345
ty some times constables &c of the town and be appoin. Stat. Con. 408
ned by the County Court. Bailment to a tavernkeeper
being advantageous to both parties it would seem that
the bailee is liable only for ordinary neglect - but it is Jon. 134-5
allowed by all that he is liable to a greater extent than 8 Col. 32-3
the pawnee or hirer - but not so far as a common carrier 58. P. 75
It is necessary that he should be trusted by strangers & 1 Hal. Com. 450
because he has thereby great advantages to use fraud
and collusion. The two open grounds of policy has
made him liable for all losses occasioned by the servant
of the innkeeper & losses by theft - except where they 1 Hal. Com.
are occasioned by the servant or companion of the guest Bro. Cas. 285
In short his liability may be considered as great 3 Bac. 180
as that of a Com. Carrier. - Innkeepers are liable 8 Col. 33
for common robbery because it is the duty of the
Innkeeper to stand against common violence. If the
Inn be broken and losses sustained by the Kings enemies
the Innkeeper is excused. It is said by Jones that force Jon. 135.
truly irresistible shall excuse the Innkeeper, but as 286
there is no definite meaning given to the word irre-

Mandatum - *significabile* it is not known how far he would extend the
Bac. 152 *Incumbent* liability in case of force. It appears how
ever that he is liable for less than ordinary neglect
By the Roman law Innkeepers were considered liable
for less to the extent of common carriers and this
seems to be founded upon the true principle of law
It is said by Coke that the Innkeeper is liable for
8 Co. 53^a losses ~~alike~~ not occasioned by his fault - and But
55. Rep. 276 - ver - that he is liable only when in fault - These
perhaps ought to be qualified before either can
be admitted for truth - It is true that actual
fault on the part of the Innkeeper will subject
46 Co. 54^a him. - *Altho* he is bound for more than ordinary case he
1 Roll. 4 is liable only for losses within his custody - so if by the
Bac. 152 request of the guest, the host puts his horse to pasture
Cap. 620^a and he be stolen the host is not liable - but if the host
put the horse to pasture without the actual consent of
the guest, he is liable
The 6th kind of bailment is called in Latin *Mandatum*
Rep. 919 and is a delivery of goods to the bailee to carry some-
12 Co. 155 where or do something with or about them. ^{without regard to the bailee} It differs
12 Co. 158 from a depositary in that the bailment here lies in
the carrying or *securance*, that is, doing something about them
but the duty of a depositary lies in his custody or keeping.
Here the advantage being to the Bailee only the Bailee
is liable for nothing less than gross neglect - but where

there is an engagement on the part of the bailee - he
is bound to the extent of the stipulation - as was the
case of *Logg v. Barnard* - Such undertaking or
engagement may in certain cases be implied by
the law but not unless the act to be done is in the
employment or occupation of the bailee - It is even
said by Jones that when one undertakes to do any act
gratuitously all necessary care is implied - This o-
pinion seems not to be well founded. And it seems
by the case reported in *Blackstone* that where there is
no engagement to use all necessary care the bailee
is liable only for gross neglect - As where A gratuitous-
ly engaged to enter certain goods belonging to B at the
customhouse - and entered them with his own by a
wrong description - the goods being seized B could not
recover in an action against A. - Jones makes this
Distinction between a bailee to do an act to the goods
and the keeping of goods - that in the former the
law implies all necessary care - in the latter
not. This and other opinions of him are too re-
fined - and so subtle as to become vague -
If a taylor take cloth to make up into a garment
voluntarily - the law implies that he will do it
skillful - but he is not bound to keep it safe from
thieves, fire, &c. The law implies an engagement
in the taylor to do the work well but does ^{not} imply

²⁰³
Bailement

Jones 75

Bag 909

1 Pac 275

1 H. Bl. 158

Jon. 73-4

1 H. Bl. 158

Jon. 87

570
Lien

Jon. 75-66

Law 910-19

55 Br. 143

Law. Jan. 667

Doct & Hud 129

3 Wm. Riff. & Law

245-6-394

1 Pow. 364

This case is overruled see
Yels. 128 & 667 as above

Law. Jan. 2445

Yels. 178

Salk. 522

Pr. Chan. 57

Exp. 585

any insurance against loss by foreign causes what
Chief Justice Holt says in the case of Coggs & Barnard
goes to establish this point - if the cask of wine be pierced
in its passage by a stranger and it be lost the carrier
when he carries gratis is not liable. - 880 Baillee

can by special engagement exempt himself from
liability in case of fraud. - - There has been much

controversy on the nature of the action to be brought

against the baillee for loss of goods, that is, whether he

be liable on the ground of contract or tort. But

it is the opinion of Mr Gould that the action ought

to be on the ground of breach of contract - this must

certainly be the case when there is an express

stipulation - and custom has made it so in an im-

plied promise. If one agrees to build a house gratis

the contract being executory on both sides no action

will lie. but if the work be begun he (the builder) is

bound by the contract. - The case of Coggs & Bar-

goes to prove that the action must be brought upon

promise. - of Bailments in general

Baillee in certain cases have a lien upon the goods

in their possession. - A lien is a direct claim or in-

cumbrance upon the property in the baillee's possession

as security for some debt. - this lien exists universally

in the 4th kind of Bailment. - The pawnee has a

right to retain the goods in all cases until the debt

be paid & this right is created by the very act of delivery. Bailors of the 5th kind for the most part have a lien "by a condition in law". & third persons having wrongfully obtained the thing bailed from the bailor cannot avail himself of the bailor's right of lien - and the bailor ^{or owner} in this case without a tender of the debt to the bailor have an action against this 3^d person. But if this third person had obtained the thing bailed fairly & honestly the owner must first tender the payment of the debt to the bailor and then bring his action - The common carrier has a lien upon the thing carried - he has a specific incumbrance upon it - and the reason given in the books is because he is compelled to carry the goods - but this reason will not hold good if it be considered that he is not compelled to carry unless he be previously tendered his hire. & more satisfactory reason perhaps is because he carries for strangers whom he knows not whether he can trust (as is the custom) or not. A common carrier may retain stolen goods even against the right owner until he be paid - It is not required of carriers to know the true owners - indeed they could not were they required to. - It is a rule in law that where one of two innocent persons must sustain loss by a wrongdoer the one who has confided in the wrongdoer shall suffer the loss. but this rule is not applicable to this case.

Bailment

Hob. 42

3 Bac. 185

3 Croft 585

2 S. Rep 485

Reg. 752

867

5 Bar. 2286

5 Bac 269

Salk. 654

Reg. 867

Lien

3 B. & P. 45

1 Bac. 209

8 Co. 14

Salk. 388

Yeln. 6

1 B. & P. 128

Corp. 154

3 Bac. 185

8 Co. 147

Hob. 142

Yeln. 6

1 Bac. 240

1 Bac. 240

B. & P. 45

Cr. L. 191

Long. 97

Innkeepers have a lien upon the person of their guests until they are paid all reasonable charges - they may have a lien upon the guests horse but only for the keeping of the horse and not for other expenses. A common carrier cannot have a lien upon goods for a former debt but only a lien upon those goods the transportation of which he has not been paid for - that is a lien upon the goods for the debt accruing upon the transportation of the same identical goods - An innkeeper may have a lien upon the horse of a stranger or as the case may be upon a stolen and the true owner cannot take him away without pay for the horse keeping. The innkeeper is bound to accommodate customers but not without tender of expenses - But a Taylor has a lien upon the cloth delivered to him to make up in to garments. Altho he is not obliged to ^{receive it, or} do the work even in case of tender. This advantage is said to be given the Taylor for the encouragement of trade and commerce. If a Taylor had been in a habit of trusting a customer it may be questioned whether or no he can have a lien upon a garment made for a customer. It is the opinion of Mr Gould that he cannot have a lien in that case. An agisting farmer has no lien upon the beasts in his custody - he does ordinarily receive strangers beasts nor is he in any case obliged to receive beasts. The Master of a ship has no lien upon the ship for his wages or

for stores furnished by him for a ship - If a taylor *Bailment*
agrees to take a certain sum for the delivery towards his
pay - he has no lien for the remainder because it is a 5 Bac. 271
maxim in law that "expressum facit cessare tacitum" Exp. 585
A factor has a lien upon the goods in his actual pos- 3 S.R. 119
session - and the bailee the moment he delivers the 1 Bar. 494
goods to the bailor loses his right of lien for the pledge Exp. 108
is then a bailee. Bailies of the L^ds King have 2 Bl. Rep. 1154
properly no lien - yet they may retain the goods or 1 Euff 4-7 S.R. 359
property, the bailor according to the terms of the 1 Bac. 240
contract. That is if a horse is hired for a week he has 7 Euff 172
a right to keep him so long - The right to retain con- 1 Mol. 128
fers a special property in the bailee and this right to
retain is proportioned to the extent of the contract
thus much as a bailee upon which the bailee
may have a lien. - It is said in Rolle that if one bai- Rol. 667
ils what is not his own the bailee shall be discharged 1 Bac. 242
upon delivering it back to the bailor either before the F. & B. 157
action is commenced or before judgement is rendered 2 Euff 107
or the bailee shall be discharged by delivering it to
the bona-fide owner - It is also said that an executor 1 Mol. 667
of a bailee must deliver the thing bailed to the true 1 Bac. 257
bona-fide owner (and this at his peril) - And an executor co-
me by the bailment by law he must deliver it to him
who by law is the owner. - But upon principle says
Mr Gould there is no difference in this case between the ex. & testator.

fraudulent as to the rights of Bailor creditors upon the prop-
erty conveyed only in B's possession and of purchasers
under him. This leads to the general law con-
cerning fraudulent conveyances. Under the
Statute of 13 Eliz. which is considered by the best
authorities in affirmance of the common law
If a purchaser by absolute sale leaves the goods
separated in the hands of the vendor - the
creditors of the vendor (whether D vendor be a bankrupt
or not) may levy an execution upon and hold sd
goods as being the property of D vendor. now the
bailor of the vendee against all claims of the
bailor or vendee. This rule is founded upon the
presumption of fraudulent conveyance and
is at present in England considered not an
evidence of fraud - but a fraud in point of law
a fraud "per se" and cannot be rebutted. It is
however said in Coke to be a sign of fraud and
later authorities (Bos. & J. ad.) seem to doubt as to the
correctness of the principle laid down in Term -
Reports - When the sale or conveyance is con-
ditional the presumption of fraud may be rebutted
as if A sells to B a piece of goods on condition that the
piece of goods shall be delivered to B when B shall have
done a certain act or paid a certain sum of money.
The want of immediate possession here shall not

360. 80

2 B. 601

1 H. 180

100. 402

2 T. Rep. 58, 59

7 T. Rep. 1

Term. 1801

360. 80. 80

2 T. Rep. 596

7 T. R. 71

2 T. R. 595

600. 432

100. 541

1 H. 167

give to the creditors of it a right to sell them Bailment
So where, from the nature of the case immediate
possession cannot be given fraud may not be 2 S. Rep. 462
presumed - as when a sells a ship while on a Exp. 542
voyage to India to the creditors of A cannot
levy an execution upon nor hold her vessel im-
pounded upon her arrival delays to take possession of her
These rules relate principally to creditors not to
purchasers - It is said by Locke that by the U.S.
that creditors ^{of the vendor} cannot levy an execution upon
property left in the vendor's possession before the 1 Inst 290
creditor became such. But Lord Mansfield says that 5 Loh 83
this Statute in affirmance of the U.S. and that there Groep. 450
fore both by the U.S. and the Statute subsequent
creditors may levy upon goods previously left in
the hands of the vendor by the vendor. - By the
Statute 21 Jam. 1 which is also in affirmance of the 1 Inst 162
common Law and which extends further than that Long 505
of 15th Edw. 2. If a Bankrupt has in possession the 11 Inst 518
goods of another with the owners consent they 7 S. Rep. 228
shall be liable to be attached and go towards 8 S. Rep. 8
discharging the bankrupt's debts. - In this case the 1 Inst 322
party must actually be a bankrupt. - The Statute of Groep. 252
this and other States being principally copies from 14 Ed. 564-572
this must take the same construction with this - 1 St 180
Creditors under this Statute do not nor can they attach

202
Fraud. convey. or hold the property on the ground of fraud but of
3 Rep. 187ⁿ false credit. - The Stat 24 Jam. 1 does not extend to
3 T. R. 618 bankrupts possessing in autre droit - in right of
1 At 159 another - as an executor administrator &c.

1 Lawd. R. P. 192 202 to the creditors of a factor, ^{when bankrupt,} cannot take the goods
entrusted to him in execution - because factors are
1 Atk. 165 generally known to have in their possession the goods
1 Ves. 348 of another. so also the lands of the wife cannot be
1 Will. 260 in execution for a debt of the husband altho a bankrupt
1 Ves. 244 neither can a mortgagee estate be taken in execution
1 L. R. P. 189 for a debt of a bankrupt mortgagee - because in the
two last cases it may be known by the deed to whom the
land belongs - but is otherwise where personal estate
1 Atk 160 is mortgaged or pawned - here there is evidence of fraud
1 Ves. 354 Where a purchaser of a ship at sea delays taking
361-62 D. R. 485 possession after arrival she may be taken in
491 - 462 execution for debts of the former owner

This Stat. does not extend to actual manual delivery - as if one sells salt to another it will be sufficient to bar the creditors of the ^{bankrupt} seller - for 2^d vendor
1 L. R. 71 to deliver the key of the store in which the salt is locked
This in law is called symbolical delivery.

To bring the case within the Stat. the goods must
in appearance to strangers be possessed as his own
goods - or in the words of the Stat they must be in
the bankrupt's possession, order and disposition

258

A temporary transitory possession will not bring it within this Act. - or where the purchaser is not in fault or by necessity leaves it in the hands of the seller or any other person. As if goods be bought to be shipped and contrary winds prevent it from being shipped - or if a horse break his leg and the rider thro necessity puts him into the custody of another till he can provide means to take him away. By possession order and disposition is meant such possession &c as is apparent to strangers and the true owner must consent to have them appear so to bring it within the meaning of the statute as if one leave with another a box of money, or trinkets locked and sealed the creditors of the bailee cannot take them even if the box be broken open by the bailee - but the owner had consented to his using them then may be taken so where a bag of jewels were left with a Goldsmith cleaned up the owner ~~recovered~~ recovered them af the smith had pawned a part of them. And it appears to be understood generally that Goldsmiths have in their hands the property of others - therefore gold or silver left to be wrought up by a goldsmith cannot be taken in execution for the debts of a Goldsmith altho a bankrupt. There are many cases of Bailment to which neither of these statutes extend.

Bailment

Worp. 135

1 H. 185

5 T. Rep. 316

Leading case
3 H. 443

1 R. W. 318

3 D. 185

1 Bos. & P. 82

1 Exp. 570

Fraud. convey.

In common cases of bailment the owner or
 1168-1178 bailor may maintain an action against the pur-
 3th 44 chaser under the bailor or against a subsequent
 1168-1178 purchaser or against one taking the bailment
 5th 10-68 in execution for debt of the bailee - unless 2^d 10-
 2th 376 be made market overt - ^{even} in this case caveat emptor
 4th 10-640 as if it bail. to Bond B sells 2^d bailment to C - A er-
 must case may have an action against C the
 purchaser for 2^d bailment. - But where money is
 deposited and the bailee puts it off this 3^d person
 will forever hold it against the bailor - because as
 126 Lord Holt says there can be no mark by which it
 1st 10-4523 may be identified - this reason Lord Mansfield denies
 will explained 3^d 10-1616 to be the true one - and says it is because it is the
 1st 10-1048 circulating medium - the free circulation of it
 10-102 must not be restrained - In Am. we have a
 10-117 statute similar to that of 15 Eliz. - ~~Only~~ Our courts
 have allowed the presumption of fraud to be re-
 butted whereas in Eng it cannot be - In 1840 London
 County where one in March purchased a number
 of cattle (cows) and a quantity of hay and left them
 in the care of the vendor's son where they had been used
 to be kept until the season was suitable to take them
 away the creditors of the vendor levied an exe-
 cution upon the cows & hay but as the conveyance
 was proved not to be fraudulent it being for a debt

465
due to the purchaser the court consisting of 6 judges. Bailment
gave judgment for the purchaser on the ground of
the insolvency of the vendor. — This was evidently
a case of necessity that the hay should be left. —
So if A baile to B and B sells to C and then B
comes insolvent — C to maintain his right against D. 306
A must prove the insolvency of B and strong evi- 1 Bos. 87. 82-88
dence of B's ownership. It is not strong clear evidence
evidence of ownership in a person that has a cow be-
cause the letting of cows is a customary thing — so
also it is not clear evidence of ownership in a man
that rides a horse because the hiring of horses is
very frequent. — This then appears to be the general
rule that where the purchaser proves the insolvency
of the bailor and also that there ~~is~~ clear evidence
of his ownership — the purchaser shall hold against
the bailor. — The bailor having no ~~complaint~~ in 7 T. Rep
the bailor no third person can hold the bailment Latch 214
against the bailor — a personal trust cannot be tr- 1 Kel. 4
assigned to third persons — This leads us to treat 5 Bac. 164
of what actions the bailor is entitled to. He is in- 260
titled to an action on the ground of right of general
property — this right he has for the bailor has only
a temporary possessory. This right of action will Sid 438
be good in the bailor — tho there has been no actual 5 Bac. 164-260.
delivery — but only a constructive delivery — a poss. in law

- So a constructive possession on the part of the bailor - although actual possession be lost - is sufficient to entitle the bailor to an action of trespass &c against 3^d persons - that is a mere right of present possession gives the right of action. But where title to land is in dispute the person who has the actual seisin only is entitled to the action of trespass &c. *4 J. Rep. 489*
- land. The question is whether the bailor may maintain an action against a 3^d person who has taken from the bailee the thing bailed for a limited time. - It appears to be settled that the bailor after the time of bailment has elapsed may maintain an action of trover against 2^d & 3^d person - *7 J. Rep. 9*
- but if the bailee had given or sold the goods to 3^d person whereby this person came suddenly into possession of them an action of trespass will not lie at any rate - and an action of trover will not lie until actual demand has been previously made for trover cannot be supported without trespass. - The bailor in order to maintain his action of trespass must have the right of present possession. But it is the opinion of Mr Gould that where oxen were let to be used by the bailee a certain limited time, these oxen cannot be taken in execution for that time - that the bailor may have an action against the sheriff in case of execution so taken by him. *18 J. Rep. 9*
- 5 Bac. 164*
- 261*
- 1 Br. 237*
- 1 Hol. 200*

26
is if a man hires a horse to ride any distance Bailment
the creditors of this ^{man} may not take the horse from
him and ride it the same distance because the ba-
ilor reposes a personal trust in the bailee. - - -
- If J. Stiles has goods in the possession of A. and
by parole gives leave to B. to take them B. cannot Cop. 577
maintain an action for them - but if the goods 2 Mo 955
had been delivered to B. by J. S. or to B's servant ^{or carrier} or Corp. 294
by symbolical delivery - then B. could maintain 15. 14
an action. Thus far as to the remedy to which a
bailee is entitled - we now come to speak of action which
the bailee may have in right of himself and bailor.
It is laid down in most of the Books that the bailee 5 Bac. 165
may maintain an action against any one who 262 - Reg. 276
takes away or injures the thing bailed. But it is said Pl. & P. 33
by Coh. in Southcot's case that the depository cannot Cop. 577
maintain an action, but the reason which he gives 1 Atk. 155
being virtually contradicted by himself in another 46 Ch. 85-4
place - it appears to be established that because every 5 Bac. 1645
bailee has a special property in the thing bailed 1 Inst. 87
this special property is sufficient ground to main- Gen. 112
tain action against the wrongdoer - Indeed it is a 1 Bac. 240-546
solecism to say that one has a right of possession and Pl. & P. 592-593 ^{and Reg.}
to permit another one to say ^{to him} "I have as good a right Cop. 577
as you. - A finder has a right to retain the goods found 1 Mo 505 ^{himself}
against all but the true owner the depository has the same

Remedy

4th ed. 404
Comm. 264
Comm. 627
12th ed. 54
13th ed. 69
Gen. 129-30-8
B. & P. 33
7 J. R. 391
1 Bos. & P. 44
5 Bac. 260
1 Bac. 242
1 Rol. 607
1 H. Bl. 81
12 J. R. 130
13th ed. 69
5 Bac. 165-263
2 Rol. 569
8 Bac. 559
Lohr 121 - Ray-
1217 - Ep. 319
4th ed. 68 - 5th ed. 124
3 Coh. 44-52
McCamb. 7th ed. 875

or a stronger right to retain - and in virtue of this right the finder and depository may have their respective actions against any who violate it so also if a servant be robbed of his master's goods he may sue the thief in his own name - for the bare possession gives an interest and property. the servant may also have an appeal. It is said by Mr Justice Buller whose opinion is very high authority - perhaps next to Lord Mansfield - that a special property is a sufficient ground to maintain an action - where the horse in which the lessee lived blew down and the timber was taken away the lessee maintained an action for the same so also ^{an unperfected} bankrupt may maintain an action of trespass against all but the assignee or assignees so also an auctioneer may maintain an action on contract against the buyer - and so may a factor & a broker. but it is otherwise with the clerk of a store - here the action must be brought in the owner's name - but there can be but one recovery in any of these cases - and by analogy if the bailor has commenced an action against the wrong doer - this will oust the bailor of his remedy by action against the wrong doer - so vice versa if the bailor commences an action. Neither can the Master and servant both have an appeal so if a jailer let a prisoner escape the creditor and jailer cannot both have an action against the prisoner

If the bailor commences an action against the Bailment
wrong-doer he thereby waives all right of remedy a-
gainst the bailee - for by commencing an action
against the wrong-doer he prevents the bailee from *Sup. 610-2*
doing that which he before had a right to do. - So
also in the case of an escape - the sheriff ^{or jailor} being considered
the bailee - the creditor the bailor - and the rescuer the
wrong doer - if the creditor brings his action against
the wrong doer he waives his right of remedy a-
gainst the sheriff. If the bailee commences an ac-
tion against the wrong doer he is answerable at all
times to the bailor because he thereby prevents the bai-
lor from bringing an action against the wrong doer *5 T. Rep 65*
but a mere recovery by one (either the bailee or bailor)
will not prevent the other from bringing an action
for special damages - frequently a bare recovery will
be a very inadequate satisfaction for the injury sus-
tained. As to the remedy of the Bailee against the
bailor - no action can be brought by the depository or
mandatary against the bailor. - nor can the action *5 B. & C. 125-26*
be of trover or ~~trespass~~ - notwithstanding what Coke *Sup. 401*
says - viz that an action of trover or ~~trespass~~ will lie
for the value of the thing must be the rule of damages.
It is agreed on all hands that in an action of trover the
value must be known in order to estimate the damages
but certainly in actions of this nature the value of

Kennedy
5

of the thing bailed cannot be the rule of damages
as if I hire a horse of 10 to ride 2 miles and be
fore it has performed the journey it takes away the
horse - here the value of the horse cannot be
1 S. Sup. 200 material to the hirer - it is wholly impertinent
Ex. 551 to the damages. - The proper action is an action
B. & P. 77 on the case. A bailor may maintain against
1 Bac. 257 the bailee either an action on the case for neglect
Cro. Eliz. 781 or trover for converting the goods to his own use or
2 Inst. 62 of assumpsit on an implied promise. This is
1 Wils. 282-2 Wils. 319 not universally true - in general an action of
8 Co. 146-1 Inst. 57 trespass will not lie - but where the bailee de-
5 Co. 18-2 Sh. 465 mays the goods he shows that he does not hold the
Perk. sec. 191 goods in the character of bailee. If the vendee
of goods orders them to be carried & appoints the
carrier - the vendor is discharged from responsi-
-bility in case of loss - the vendee only can have an ac-
Coamp. 294 tion against the carrier - but if the vendee sends
orders for the goods to be carried and the carrier
is appointed by the vendor then the vendor
only can have an action against the carrier.

End of Bailments

The money that is laid out in the education of a child (Briln 1711)
at an university is not an advancement - nor in
procuring an office - or a trade. It is otherwise in this
State. - What a parent has charged in his books against
the child for his education in an university is advancement.
A deed of gift without a valuable consideration is presump-
ed to be an advancement but this presumption may Pr. Ch.
be rebutted by parole proof. Money laid out for the expenses 170
of a journey or for the restoration of health is an advance- 2 Pl.
ment. When the testator provides for one of his children 446
by deed of gift and for the others by will the unequal
proportion - in case of a lapsed legacy it shall be distributed
equally - the same as if they had received equal shares
before.

The End of
Excuses & Administrators

It is essential to every express contract that there be
 evidence of two parties, at least, of sound intellect
 with contracts not binding by reason of of the dis-
 ability of ^{one or} both parties. it is generally true that the
 contracts of Idiots Lunatics Infants &c are not bind-
 ing. It is universally true where a grant is made
 upon consideration either by or to a lunatic ~~except~~ ^{even} ~~even~~
 A voluntary grant to a lunatic or an Idiot is good.
 10th. 190 as this cannot be supposed to be detrimental to one
 501 non compos mentis. It is absurd to say as some have
 184. 316 that in this last case the law presumes consent on
 the part of a lunatic. His being destitute of discretion
 precludes the idea of his knowing what is for his ben-
 efit and what detrimental to him. A Contract is an
 agreement upon sufficient consideration to do or not to do a particular thing
 100 17 It is laid down by Black as a rule "that a lunatic cannot
 40th. 124 when grantee avails his contracts even tho he recovers his
 reason. but the heirs may avail them after his death
 for they shall not be bound by the consent of a per-
 son destitute of the capacity to consent." The same
 may be said respecting the heirs of a person of the
 soundest discretion as to their power of availing them-
 selves of his contracts. There has been some dispute whether the
 contracts of Idiots and Lunatics are absolutely void

or only voidable. An estate is granted to J. S. a man Contracts
at for life with remainder to some other. J. S. then
surrendered his right? Was this surrender void or
only voidable? This being a contingent remainder
and the maxim being that "if an estate for life
with contingent remainder passes from him who
has the estate for life to one who is not a remainder
man - the remainder is gone from him forever"
if this surrender of the durable was only voidable
the remainder man had lost his right forever.

It is said by some and strenuously advocated by
but one of the most able writers in the English law
that a man cannot come into court and shut himself
and thereby avoid his contracts. The author dis-
sents upon this subject and it very questionable whether
the modern decisions are not an innovation of the
common law as it formerly stood. Fitzherbert who wrote
in the reign of Hen. VIII speaks of it as law in that
time that a man might avoid contracts which he has
made dum fuit non compos mentis. This appears
from an old writ framed for the purpose of avoiding
contracts made dum fuit non compos mentis -
The year books exhibit one decision to the contrary
in the reign of Edward IV. & some expressions seem to
favour this decision grounded upon the reason that a
man cannot remember what he did whilst a non compos

2 Blom.

295 563

100. lib. 598

next of

equity &c.

holding

June 10

1

Several decisions since then will however go to establish the point that a man cannot void his own contract by plea of non sane memory. And this is the opinion of Brevint after weighing the authorities & giving for reason that otherwise a door would be open to fraud. Judge here says that reason & common sense lead to a contrary doctrine. A real man cannot be shown all will agree ought not to be bound by a contract made while non compos. That a man should feign a want of discretion for the purpose of making a bargain for his own advantage is hardly supposable. And that he should ever make a bargain evidently to his disadvantage will argue a real rather than a feigned want of discretion. If a person is about to make a contract & afterwards pleads non compos - it must be doubtful whether the bargain would be essentially to his advantage or not. - must feign himself a fool or a madman and make a bargain without ^{apparent} regard to his interest - continue the symptoms of irrationality till it becomes pretty certain whether he is like to make or lose by his bargain - if it proves disadvantageous he must throw aside his madness and offer reason to assume his powers - come into court with a number of his neighbours who can testify that he once acted like a fool. - Judge here believes that a man may at present plead non compos under his plea an English court.

This plea was admitted by the ^{High Court} Court of Errors in Contracts
then held the first session after the new organi-
zation. — As to the contracts of infants & feme co-
verts they are sufficiently treated, under the title
of Parent & Child — Baron & Feme. — As to the pro-
ceedings in Chancery with regard to Facts & Functions
upon information that one is an idiot or lunatic Alth 170
the Lord Chancellor issues a commission or writ 3 Re. 111
called de Facta inquirende to three men to make inqui- Alth 118
ry whether the person named in the writ is non
compos or not. Upon his being found non compos
termed an office found the court of Chancery
take charge of his property & see that it is applied
to his own use. Chancery may make void all con-
tracts made after he became of non sane memory
all contracts made by him after office found being
of course void. Formerly a scire facias was issued Alth 26
against any one with whom a lunatic had made
a contract to shew why they should not be avoided.
but the modern way is for the attorney general after 1 Vern. 414
office found to present a petition in Chancery for How. 28-34
avoiding his contracts and in some cases the non
compos may be joined. If words of law will do to
prevent upon their contracts Chancery will issue a
super sedas which is a kind of prohibition to pre-
vent them from carrying their contracts into execution.

46
Intoxication It is said that no one can plead intoxication in
order to avoid contracts unless the other party was
the procuring cause of intoxication. Drunkenness
say some is one's own fault - he deserves punishment
3 Dec 131 & he shall have no relief when he is cheated in
1745 19 his debauchery. I think differently says judge. How-
but I know not that I can be warranted by authority
in laying down different principles. The policy of
the rule as it respects contracts is different from
that which respects crimes. No person is obliged
to contract with a drunken man. But every per-
son is exposed to his rashness and fury. It is diffi-
cult to separate the idea of fraud from a contract
made with one in a state of intoxication. It is
interfering with that rule of equity that no person
shall take an undue advantage of another's situation.
I know of no good reason says he why they should not
be set aside both in law and equity.

The law it is said does not measure the size of men's
understandings neither does equity relieve for weak-
ness of intellect - for there is no such distinction
known as a legal and equitable capacity. - but all
who are composites mentis stand on equal grounds
as to the disposition of their property and equally
3 Dec 129 bound by their contracts. Chancery *ex inter se* some-
times where persons of weak intellect have made

~~make~~ disadvantageous contracts, on the ground as Contracts
is said that fraud was practiced. - but this very case
supposed that the person cheated was incapable of
~~preventing~~ fraud by the exercise of due discretion
Such has often been given also where persons affect-
ed with paralytic complaints have made disad-
vantageous ^{contracts}. People of this description are so much
under the control of their passions that they are
liable to imposition.

As to that class of cases where mistake or error
in both parties vitiates contracts viz. Where the parties in
consequence of mistaking a fact have compromised a
doubted right the contract shall not be set aside un-
less the contract be a purchase. - as where A & B claim
the same piece of land under different titles. Upon
compromising, A agrees to give B 500£ to release his claim
B finds afterwards by a trial with a third person that
he might have held the land in fee. Here their contract
is valid and B in consideration of 500£ is bound to
release his claim. But in purchases where the
fact mistaken is the sine qua non of the contract
the contract will be set aside and the parties placed
in statu quo. the enhancement of the price on account
of a mistake is no ground for setting aside the contract
but it must be made to appear that the buyer would
not give an adequate price for the thing bought had he

10th 726
2d 59
Comp. 5

Mistake known the fact which was mistaken. An action for damages will lie where a mistake was the cause of an enhanced price - but the contract cannot be rescinded in Massachusetts bought land under an impression that the land was good bottom land - interspersed with rivulets &c and afterwards sold the same land to B in Connecticut. - the land which was in Virginia proved to be mountainous so that Texas could hardly climb over it. In the first sale there was fraud but in the last both parties were ignorant. The court set aside the contract. A dressed her negro girl in boys clothes and sold her for a boy to B - B not knowing the fact sells the same to C who as appeared did not want a negro girl for he had enough already. -

Pow. 127

here the contract was rescinded. It would seem that the following case ought to be decided upon the same principle - where A sold a horse to B, fraudulently misrepresenting the horse to be sound when he had the heaves - afterwards B not knowing that the horse had the heaves sold it to C under a mistaken idea that the horse was sound. here altho the soundness of the horse was the sine qua non of the contract, the course of proceedings in courts has been not to set aside the contract but to give to the purchaser damages according to the value of the horse. here seems the judge a new rule was introduced of making the value of the thing the ^{of damages} ~~value of the thing~~ the rule.

It is a general rule that ignorantia legis non excusat ^{contracts}
but where the ignorance of ones right or rather
where the ignorance of the law places both of the
contracting parties in a disadvantageous situation
there being no suggestio falsi or suppressio veri by
the other party. — as where an estate was left to a son
and daughter — before the appraisal of the estate the
son gave to his sister her election — either to take her
orphanage or 10000£ — she not knowing the value of 3 Rep. 316
the orphanage chose the latter & after the valuation
of the estate (which she had a right to insist upon be-
fore she made her election) — it was found to be treble
the value of 10000£ — and the contract to accept the
10000£ was rescinded on the ground that both par-
ties acted without ~~know~~ knowledge of their legal rig-
hts. — The schoolmasters case was here repeated — 3 brothers
the middle one died and the other two submitted the
case to a learned schoolmaster who said that he had
read or heard that the land descended — and that the
youngest ought to have their deceased brothers estate.
they compromised but it was rescinded by Chancery.

A contract to do an impossibility is not bind-
ing — as if a man engage to walk 1 mile a minute
or carry Litchfield meeting house to the South Farms
these are void because impossible in the nature
of things. — a distinction is made between an

Impossibility in the nature of things or a natural im-
 of conditions possibility - and a legal impossibility. - Where one
 contracted to turn up the Atlantic ocean - also where
 one engaged to furnish another with two devils - for
 the purpose of incantation. These were considered as
 impossible in the nature of things - and in the last
 case one of the judges declared that the contract was void
 on the ground of illegality. If one covenants to do what
 the law forbids this is a legal impossibility as if A
 by deed conveys a piece of land before he gets a title
 here the contract is not voided but an action will
 lie for damages. Chancery will never decree a specific
 performance when ^{one} covenants to convey land and after-
 wards conveys to B - this last conveyance is void. Where
 8 Bro. Par. one conveyed a tract of land but if appeared that a
 Cas. 117 bill of land in the middle of the tract did not belong to
 the grantor Chancery did not decree specific perform-
 -ance of the contract. A covenantor with B to convey to
 1 L. R. 117 him for 26 as much eye as would be accumulated by
 1164 doubling a single kernel in geometrical proportion a
 6 L. R. 355 certain number of times stipulated. Here the contract
 was held to be void on two accounts - 1st the impossibility of
 specific performance & 2^d the fraud practised upon one
 who was not able to calculate the quantity. Where one con-
 tracted to sell a horse for one bushel corn for the first
 nail in the shoe of the horse - & for the second &c doubling

for each nail in the horse's shoes - Here the contract ²⁸¹Contracts
 was set aside not on account of the impossibility ~~but~~ ^{nor}
 of fraud but directed the jury to estimate damages by
 the value of the horse. This was a new rule. Judge Hale
 thinks the parties ought to be placed in statu quo on the
 ground of undue advantages being taken of another's
 ignorance. - Contracts possible at first may by
 the act of God or operation of law become void - as if
 one give a bond for the appearance of another in
 court - & death prevent him from appearing. But where
 he is in prison - the bond is liable to be forfeited - the court
 would in ordinary cases continue the cause? If one
 enter into a contract and by a law made posterior
 it becomes unlawful to perform what is required in
 the contract it is void - but suppose in this case mon-
 ey had been paid by one party in consideration of the
 other party's doing some act which is become unlawful
 here the contract is void and the money may be re-
 covered. The decisions of the courts in one respect seem
 to be destitute of all principle - J. S. gives a bond to S. S. of
 1000 - The conditions of D. Bond being that S. S. shall
 carry Litchfield Meetinghouse to South Farms on his back at
 one time. Tho this is a contract to do impossibilities and
 nothing more or less yet decisions have been to make
 the bond valid. Where the penalty is joined with the condi-
 tions the bonds have been made void. By these decisions

Co. Litt.
 208
 Plind.
 32
 1 Salk.
 172

Illegal It would seem that a distinction was made between
 considerable bonds where the conditions were united with the prin-
 cipally and where they were separate so that they
 might be cut off with scissors. I do not know say
 Judge there how decisions would be made since the
 rule is established to sign the bond only below the
 conditions. Contracts may be legally executed or rather
 legally made & on fair grounds yet be liable to be de-
 feated by the annexed conditions as if A covenant to convey
 a farm to B on condition that B do or omit doing some
 act - here the condition is precedent and if B dies before the
 act is done or omitted the covenant or contract is void
 but if the conditions be subsequent as if one absolutely con-
 vey a farm to B but requires to do or omit doing some
 act which is to be done after the farm vests - here if B
 dies before the conditions are performed the conveyance
 will nevertheless be valid. Every contract where the con-
 sideration or thing to be done is unlawful is void as if
 one contract to give to A 100£ for killing B - the contract is void.
 Even if A had done the act he could not recover the 100£
 So if a man enters into a contract to perjure himself for
 100£ - and does actually perjure himself - he cannot re-
 cover the 100£ - tho the bond or obligation be apparently
 legal as if expressed in general terms for consideration
 yet parole may be introduced to prove the illegality of
 the consideration. And this is not against

Collier &

Blanton

2 Wilson

the general principle viz that public policy cannot be contrived
induced to show a ^{total} consideration to a written instru-
ment. A person can be hired to do an unlawful act
and actually receive the money for doing so act - & the
act be not done - here the money cannot be recovered
but if the conditions were at first lawful but afterwards
became unlawful - an action will lie for the recovery of
the money. If one make a contract not to follow his
lawful calling, it is void on account of policy - as if
a lawyer agree not to practice law - or a farmer
not to plow his land - or a sheriff not to take his fees - &c.
these contracts are void - the first because it would have
a tendency to get the profession of the law in the hands
of the vilest lawyers - or those that are destitute of prin-
ciple. - The common law always considered insol-
vent debtors as rogues - and in this respect shows its bar-
barity. No one of these insolvent debtors imprisoned can
bind himself to stay in prison after the debt is paid. It
is necessary that there be a legal process before one can
be lawfully imprisoned. Contracts with an alien en-
emy are void - because policy forbids that any thing
be done which shall have a tendency to alienate the
affections of the people from their lawful sovereign. The
wagers or bets concerning warlike - as where one laid a
wager that America would be independent by such a
time. it did not happen - the contract was set aside.

78
Might Marriage brokerage contracts are void - there are conditions set aside on the ground of public policy - as it led to destroy happy marriages or rather render marriages unhappy. Marriage brokerage contracts are where one hires another to intercede for him in gaining the affections of and procuring the marriage with another. A promise to violate any law

230 or duty is void - as if a sheriff promise to let a prisoner escape - he cannot be compelled to abide by the promise whether he has actually received the consideration or not. All contracts which have a tendency to encourage others to do unlawful acts - as if the Lithographic Printer accepts of a bond to indemnify him in case he printed a libel - this bond is void. But where one engages to indemnify another in doing a certain act the bond or engagement is not void if the doer of the unlawful act did not know that it was unlawful - as where one with a summons from the Court of Chancery seized upon another who ~~was~~ accused of a contempt of the court - and promised to indemnify the latter 652 catchkeeper in assisting him - The Taverer kept him as prisoner - and if afterwards it appeared that the summons was forged - and the promise to indemnify was held to be valid. In England waging is countenanced by the law but as the law is not ~~to~~ held to be public even in that country

We ought not to be bound by it: but in England where Contracts
one laid a wager with one of the ministers who had
much influence over the King that he should not
have a ^{successor} ~~disinherited~~ - it was held to be void. - So where
one bets with a Judge that he shall not get his case ~~heard~~ ^{heard} ~~lost~~ ^{lost}
or with the counsel of his antagonist - all Wagers
of this kind are held to be void. All security against
the consequences of doing an unlawful act ~~is~~ ^{is} ~~void~~ ^{void}
absolutely void. All contracts for warranty affect- 729-735
ing the name or reputation of third persons are void
as if one bet that another has defects or diseases, &c.
Contracts for introducing indecent testimony
in court are void unless necessary in the case.

All contracts prohibited by Statute stand upon
the same footing as those at common law. A
debtor executes a note or bond to B - the consideration is il-
legal and therefore the bond is void - but B indorses
it over to C for a valuable consideration and then be-
comes a bankrupt. Here C cannot recover of B because
he is a bankrupt - nor against A for A gave it for
an illegal consideration - therefore it is lost, but
it is otherwise with negotiable notes and Bills of ex-
change. - Tho' the principle would seem to be the same
in both cases yet for the sake of favouring commerce
the indorsee may have a lawful claim upon the or-
iginal giver. If it by written contract engages B

Usury

to smuggle properly it is void whether the act of smuggling be done or not. If the act be done and the consideration be discharged the money or consideration cannot be recovered - or if the act be not done and the money be paid it cannot be recovered. It is otherwise where the contract is executory. - here if the money be paid and the act be not done the money may be recovered - but if the act be done it cannot be recovered. - To this class of cases there are some exceptions. Where two or more make a contract both parties knowingly violating the law - as where two at a gambling table contract with another to put money at stake ownership to be determined by the issue of an unlawful game. The law takes no notice of such contracts - so if one has actually paid money according to the event of a game no recovery can be had & if a contract be made for payment it will not be enforced in law nor equity.

Smith & Bramley

Usurious contracts are those where more than legal interest is agreed to be paid on the one part and not received on the other for the loan of money.

The above
authorities
belong to
this rule

It is a general rule that where money is paid ^{illegally} under an imputed hardship it may be recovered. Where usurious interest is paid equity gives a right to recover the surplus above lawful interest & no more. Tho I know of no case says the Judge where the surplus might ^{not} be recovered in Equity.

yet cases may arise where a man might according to every
natural equity take more than lawful interest. The
principle upon which Equity gives a right of recover-
ing ^{in surplus} in contracts of usury is that they are inequi-
table unjust & oppressive. Tho the laws of Society are
not to be broken with impunity yet ~~in~~ ⁱⁿ some cases it is not
deemed unconscientious to break the law and pay the
penalty - as if one bury a deceased relation in linen
instead of woolen - and pay the penalty. - If the con-
tract be executory no recovery can be had for the sur-
plus. - Suppose two partners enter into a contract
with another where it is expressly stipulated that the
partners shall pay 12 per cent - illegal interest - the whole
of this contract is void by law - but suppose one of the
partners had paid up the whole sum due - can he
come upon the other partner for his proportion?
Here no implied promise to pay can be supposed - and
if there was no express promise to pay nor privity
of the other partner no action will lie against him.
Some Statutes go to make void the security upon
contracts but leave the contracts themselves exactly as
where they were before the security was taken. As 1077
if an infant give a bond for necessities - the contract is good
but the bond is good for nothing - So if one
upon liquidating his accounts with another finds a
balance due to him and compels the other by threats

usury

Proc. 215

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816

816

816

or by throttling him—to give an obligation—this is void but the account thus liquidated stands good against— It also if one lends money to another expressly for the purpose of gambling all security is void but the express or implied promise to return the money remains good. Proul has some very refined arguments to prove that upon the written security's becoming void the implied promise—or rather the previous contract is ipso facto revived. — — Formerly the Common Law would not allow interest on money lent to be taken at any rate— afterwards it was practised to considerable extent thro'out the kingdom upon which a statute was made from which the not directly declaring that yet it might be inferred that interest of 10 & 1/2 per cent might be taken on loans of money. — before this it was held to be un-conscientious and as the juries then believed very criminal to take interest. Every contract or obligation in which it was stipulated that more than 10 per cent should be given was void— afterwards the rate of interest was by successive statutes reduced down to 5 per cent where it is at the present time. — A penalty of thrice the amount of the obligation was inflicted upon all who actually took more than lawful interest — and so the law stands at present — thus if A loans to B 100 £

and takes his obligation for 100^l reserving the 10^l Contracts
as interest - the obligation will be void - but no pen-
alty is liable here for the interest is not paid but on-
ly reserved. But suppose it gives a bond of 100^l
to B upon lawful interest - at the time of payment A
tells B he must have 12 per cent interest - so B pays the
required interest - This does not destroy the obliga-
tion - it is valid - but A subjects himself to a penalty
of treble the amount of the obligation viz 300^l. If
the borrower in the first case had allowed the 10^l
reserved, as interest & paid up the 90^l according
to the agreement then the lender would have been
subject to a penalty - and the obligation would have
been void also. There must have been some corrupt
express agreement on the one part to give and on the
other take unlawful interest at the time ~~the~~ obligation
is given (or before) to render the obligation void. But the
penalty is inflicted where the obligation is valid (as with
lawful interest) but upon the payment of the obligation
more than legal interest is allowed. No *ex post facto* Cro. E. 20
contract to pay usurious interest can make void a pre- 1 Saund. 294
vious ^{legal} obligation. No matter in what shape the loan 2 Mod. 307
is - it will be equally usurious if the loan consist of goods
at an exorbitant price - provided it is actually a loan.
as if A applies to B for a loan of money - B tells him he has no
money - or having money cannot lend it for lawful interest

200
Hurry but says he here are two hoggsheads of rum which
you can sell for 90 \$ each - there you may have for
the 90 100 \$ each. Here the contract is usurious and may
Long be avoided. The same is the case if part of the loan
700 be money and the other part goods at an exorbitant
price. - So also if the obligation given be a quit one
and another taken at the same time for unlawful in-
Cre from terest. Both obligations are void. But if the unlawful
508 interest had been agreed upon - and even put into an
obligation ~~by itself~~ ^{by itself} after the original was given
only the last will be void. but it must have been a
bonafide express fact agreement. According to the
old rule of the common law it was usurious to reserve
from the sum lent the interest which would have been
due at the end of the year. as if one in this state lent
94 \$ for a year & take an obligation for 100 \$ - Here it
will be seen is more than legal interest reserved, for the
lender has 6 \$ for the interest of 94 \$ - and also the in-
terest of the 6 \$ for a year. A statute was finally made
67 J 26 by which it became lawful to take interest in this
the 644 manner - but as that statute was not binding in
this country - our courts have decided that it is law-
ful to take ^{the} interest at first - in the same manner, or
at any time in the year. There must be a real in-
tent in the lender to take unlawful interest in order
to render a loan usurious. Therefore if the borrower

make a mistake in drawing the obligation it is not Contracts
usurious. — as where a scrivener was directed to draw
a note of a 100^l at the rate of 6^l a year for 6 months. Gro. J. 671
and he drew it for 100^l at the rate of 6^l for six months & Kent is
a mistake of the law will not render a bond usurious Gro. J. 501
Before the year 1780 our courts had ^{not} established any
rule for calculating interest & there were almost as
many ways for calculating it as there were people
to take it. One way for calculating interest was where
there were indorsements — to cast the interest upon the ori-
ginal principle to the ^{at} time ^{the note is to be settled} — then
cast the interest upon the payments respectively from the
time they were paid to the present time & deduct this
last from the principal and interest before found. This and
the following method was manifestly against the interest
of the lender — another method was to put the princi-
pal in one column and the interest up to the first indor-
sement in another, opposite — setting the indorsement
under the principle & subtracting therefrom — the next
indorsement to be taken from what remains — and so on
till the principle is exhausted — then the indorsements
go to the interest. here no more than simple interest
allowed — no interest being allowed on arrears of interest.
The rule established by our court in 1780 is different
from either of these. By this rule the interest is to be
cast upon the principal up to the first indorsement if

202
Usury the payment or indorsement is one year or more from
Interest the time the note was upon interest - this interest is to
A be added to the principal and the ~~payment~~ deducted
Method of from the amount - the interest is to be cast upon this
casting inter- remainder to the next indorsement - (if the indorsement
est in the State be made at or after a year from the last indorsement)
Connecticut and so on thro all the indorsements. But if any indor-
ment be made within a year from the time the obliga-
tion began to draw interest - or from the time of the last
indorsement, the interest is to be cast from the time of
the last indorsement - or from the giving of the obliga-
tion up to the end of d^{d} year and added to the principal
or what was due at the beginning of this year - the
interest is then to be cast upon the indorsement back
from the end of d^{d} year to the time of the indorsement
and deducted from the amount - viz the interest upon
the end of the year added to what was due at the be-
ginning of the year. In calculating the interest
to the next indorsement - the time must be reckoned
from the end of the year - not from the time of the
indorsement. - This is the method of calculating in-
terest in the State of Connecticut & this says the
Judge is the only true method. The rule which
the United States court have established is like this
only the interest is cast from indorsem. to indorsement
taking no notice whether payment be made within

a year from the first incurrence or not.

Contracts

A contract for interest upon interest is not usurious & does not make an obligation void yet the borrower may avoid his contract to pay interest upon interest. But if he has actually consented to pay & has paid interest upon interest no recovery can be had. This principle is established on the ground of policy not of justice for the lender becomes intitled to his interest yearly and may by action receive it and put it out again upon interest but not to the same man. The true principle seems to be to prevent men from being too much involved in debt before they are aware of it. - J. S. executes a note of 100£ to A. - 10 years afterwards compound interest is reckoned upon it and a new note is given for the whole. This obligation is not void. but Chancery will curtail the surplus above simple interest.

A belonging in N. York state lends to its belonging in this state a sum of money ^{the obligation is deemed} in this state at 7 per cent interest this being the lawful interest in New York it is not usurious. Here according to the strict letter of the statute the security is void - but the contract was not corrupt nor according to the meaning & spirit of the law was the security void. The same is the case if the original security had been made in N. York and renewed in this state. But if both parties belong in this state &

usury they go into & York with a view to make such a contract it will be usurious. Cases of a similar kind are found in the books - as where one borrows money of another belonging in Ireland, the obligation drawn in England at Irish rate of interest. The obligation was held to be good. - But on the other hand where money was borrowed in Eng. with a mortgaged security of land in Jamaica, at Jamaica interest it was held to be usurious. These ^{two} cases says the Judge are hard to be reconciled. - It has a good note against B - afterwards he makes an usurious contract with B and reduces the two obligations into one. - All security for both contracts are then void. But altho the security for the first contract is gone yet an action will lie upon the ground of the original contract - for this is revived by the destruction of the security in the same manner as if the security were lost by accident or time. - This does not come under the old maxim that "the right of action once gone is always gone." There are some cases where an usurious note may be purged. - as where it is sold to a third person who is not privy to the fact of its being corrupt - the same is the case if left after the holder's death to his executor. but the taint is hereditary - as if bequeathed - it is still usurious. Where the obligation is in the nature of a penal bond it is not usurious.

29
As if one promise to pay by such a time but if he fail. Usury
to pay by the specified time then to pay double the
sum. This altho reduced to writing is not usurious 5 Ch. 69
it will not make the obligation void - but the pen-
alty will be chancered down - the same as a penal
bond. -

A *bona fide* hazard of the whole principle will justify
the taking of more than legal interest. as in Bottomry
respondentia where in the first a capital is advanced
to the borrower who binds himself to restore the principal
with the interest agreed upon provided the vessel returns
safe into port - in the second where the money loaned
is laid out in goods shipped and only the borrower per-
sonally is liable upon the return of the vessel. See Sum.
But a colourable hazard will not justify taking illegal 209 518
interest. - As where one in sound health promises to pay 12 Shew. 8
percent on a sum borrowed - which on condition that he 1 Lev. 54
dies before tomorrow morning shall be lost to the lender. Hudson 518
So if one lend a sum of money as 100^l conditioned to be
doubled if a Packet go from N. Haven to N. York in safety 5 Ch. 69
but if the packet be lost then then the principle to be giv- En. 6. 642
en up. So where one borrowes 100^l on conditions to pay En. 6. 741
300^l 3 years hence if any of his children were alive at Bath. 68
that time - if not the 100^l to be forfeited to the borrower.
In all these cases the hazard is colourable - the obli-
gation usurious and therefore void. Upon the prob-

Usury probability of loss dispenses the idea of usury.

Annuities are not usurious interest. as if one
3 Mch 829 put out a sum of money with a view never to receive
3 Mch 530 it again but in consideration thereof to receive an
11th 501 annual payment for the life of the borrower or the

Gr. J. 252 If the casualty goes only to the interest it is not usurious

Bro. J. 27 It has been doubted whether if a man pleads usury, and
1 Key 164 fails in making out proof - he can have a new trial.

There are no cases recorded in the reports of a new trial
being granted on this subject. There have been two
instances in this country one in this state and one
before the United States court - where application
has been made for ~~new~~ trial - but in the United
States court a new trial was not granted on the ground
of the party's having known ~~at the first~~ ^{that} trial of the
witness - for the introduction of which he applied for
a new trial. In this ^{that} a new trial was not granted on
the ground that the legal were not taken for a new trial
by not filing a bill for that purpose. So that there
has never been a judicial decision on this point. It
seems reasonable, says the Judge, from the general
principle of granting new trials that there never
should be new trials granted for the defendant who
has paid usury and failed unless fraud had been prac-
tised on the other side in getting the witnesses out of the
way or the like causes. In all actions where promissio

are inflicted - whether brought by the proper officers or ^{parties} ~~Constructors~~ individuals in their private character - if the defendant be not convicted upon the first trial - he shall not be brought into court again for the same offence except for the cause of fraud just before mentioned.

The object of the penal statutes are to discourage the practice of what is thereby forbidden - by putting it in the power of individuals in their private capacity to watch the breaches of the law and prosecute without incurring expense out of their own pockets.

The statute respecting usurious bonds was made as a penal statute - it does nothing more nor less than inflict a penalty on the holder of an usurious note to the whole amount of the note and lawful interest upon it.

Equity never inflicts penalties like this - but in England where a bill is brought into Chancery for the purpose,

Chancery will curtail the surplus & decree payment of the principle and interest. There has formerly been

some dispute whether a bill of this kind could be brought into Chancery - because say some no bill can be

brought into chancery for the redress of wrong but those for which no ^{adequate} remedy can be had at law. but

here say they a remedy and more than a redress of wrongs can be had at law. Notwithstanding what is

here said it cannot be doubted but that a bill might be filed in chancery when no proof of usury could be had at law

Usury

And I think says the judge a bill of this kind may in point of principle be admitted on this ground viz that the borrower may think it unconscientious to destroy the obligation entirely. We have a statute in this state by which when an action is brought upon the obligation and the defendant intends to plead usury he may file his bill against the plaintiff on or before the second day of the session of the court - for compelling the plaintiff to ^{disclose} swear to the usury - if it appears to the court that the obligation is usurious then the court strike ^{out} all the interest and leave the naked principle to be collected against the defendant. If the Plaintiff will not disclose the usury the court do not consider it as a contempt but give judgment for the defendant - rendering the obligation void. A remarkable case once came before the court - where an legal obligation was taken by the lender and a separate note for the usurious interest. Upon a suit of this usurious note - the defendant plead usury and filed a bill for the disclosure of the usury - the Plaintiff answered that it was usury the whole of it. The court not knowing what to do - for if they struck out all the interest they would strike out the principle also. & in this way judgment would be rendered for the defendant just as if the plaintiff had refused to disclose the usury - This they thought would not do

because as the ~~discharge~~ ^{discharge}ment for one party makes the contracts
cost come upon the other - the ~~defendant~~ ^{plaintiff} would have
been liable for the costs of suit - The court in order
to make the costs come upon the defendant consti-
tuted a principle of six pence or the like and gave
judgment for the plaintiff. — If the obligee or the
one to whom the note was given be dead no bill can
be filed by the defendant for the discovery of usury.
no one being supposed to be privy to the usury but the
one to whom the note is given. — In pleading usury
custom has made it a rule to state in the plea or de-
claration a certain sum as 5 L or 6 L or the like over &
above the legal interest but it is not necessary to prove
that this sum alleged is the true sum above the legal
interest. — therefore it is no matter whether the sum
alleged in the plea is more or less than the true surplus.
All contracts made under D. U. R. Co. S. S. or illegal
restraint are void. There are two kinds of duress
viz duress of imprisonment and duress per minas
The first is where one is induced to make a contract by
his being unlawfully deprived of the liberty of his per-
son. The second is where loss of life or limb or fear of
bodily harm or imprisonment induces one to make
a contract. There are other ^{divisions} ~~sorts~~ of duress viz
Duress in Law and duress in equity. As to Duress
in law or legal duress - all contracts made under an -

Duress imposed hardship such as imprisonment menace of life or limb are absolutely void on the part of him

9 Km. who was in this predicament - and altho the contract 316-324 was afterwards ratified it is voidable in equity. It has 320-321 Paragraph been questioned whether contracts to release ones relations 116-266 from imprisonment may not be avoided by plea of 1 Lev 68 duress - as if a father contract for the liberty of his son 9 Km. 316-7-322 or to prevent an assault and battery of his son. There have 320-321 been many contradictory opinions on this subject.

but it seems to be agreed that a contract made by 9 Km. 319-24 a man for the release of his wife is void - and the reason given is because the man and wife are in law considered as one person - & a mans contract for his own release is always void on the ground of duress

9 Km. 316-4 is to legal relations such as master & servant - and 317-68 Moral relations such as friends it is no duress when 116-266 one contracts for the release of the other however dear (arguendo) ~~how~~ or strong the ties of friendship may be between them.

9 Km. 321-35 No restraint upon a mans cattle or other property 316-3-319-24 nor ~~threats~~ threats of injuring it - as burning a house where 116-222 cannot injure his person or that of his wife - can make void his contract to be relieved on the ground of duress & menaces & with bodily harm such as would be considered duress per viros - telling him that if he will execute to him a note of 40£ he will not carry his threats into execution - B declares he will not but tells him he

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will give him a note of 200 - Here it was argued that Contracts
that it was a voluntary act and therefore - ought not
to be set aside - but Court decided that it was du-
ress. Where a man promises while under duress
to make a contract when the duress is removed and 9 Vin.
does accordingly make a contract when he obtains 317 = 11,^m
his liberty - tho there is no case reported directly 318 = 1087,^p
to the point - yet it would seem to be agreeable to the
general principles of law to vacate the contract be-
cause a conscientious man would consider that vow
too binding to avoid it arbitrarily. Powell is of contr. opinion.

Evidence of duress cannot be given under the general 318 = 119
issue - but duress must be pleaded specially. one -

Thus far contracts made under duress are regarded
in law - but in Courts of Equity reliefs given where
courts of law would not interpose. - Relief is here gran-
ted where the fear of some evil to one's person or prop- - 200
erty induces a man to make a disadvantageous con-
tract. No man ought to obtain a right by doing a 7 Vin. 49
wrong act - No one ought take advantage of his own wrong - & no one
ought to take advantage of another's situation. It is no matter how
great an evil or injury is done to another person & the 3 Pl. 271
contract be made to satisfy him for the injury yet
if it were made under duress it will be void. as where
one was found in the bed with another's wife and a sword 3 Pl. 294
being drawn against him - he for the sake of his life was

Fraud induce to give to the husband of the wife an obliga-
 tion of 1000. This obligation says Lord Cowper would
 1755.19 have been void but after duress was removed the
 1784.11 man in order to preserve his reputation renewed the
 obligation - and it was held by L. Cowper to be binding
 Fear arising from a just reverence of a superior - or if
 a son make a contract with the father will not am-
 ount to duress. It is quidam man trustee for her
 daughter's husband's estate - she would give her consent
 to her marriage with C on condition that C should
 by deed make over to A his intended wife's mother all
 the rents and profits of the land during her life - & if
 1765.118 he refuse she determined to place every obstacle in the
 way of their marriage. He finally consented rather than
 to lose his dukinica to give her a deed of the rents & pro-
 fits of the land - which deed the court held to be void on
 the ground of duress.

Of contracts rendered void by Fraud & Duress

Fraud in contracts sometimes renders them void
 at law - sometimes in Equity & sometimes in nei-
 ther but in this latter case satisfaction is given in dan-
 ages - & sometimes where damages are given in a
 court of Law, Equity interpose to prevent injustice.

1765.118 It is a universal rule that bonds or written contracts
 voidable in the execution are viewed the same in
 law as in Equity - and both will set them aside

as if one of the parties write the true and correct ⁵⁴⁰ contracts
to the other different from what is written - here the
bond is void. Where the fraud is in the consideration
Courts of Common Law do not rescind the contract
but give satisfaction in damages. If the contract
is respecting ^{conveyance of} real property Courts of Chancery will
rescind the contract and order the money to be paid
back if any had been paid towards the same or order
the bond to be given up. The Court does not rescind the contract on the
ground that too much or too little is given for the
land. But when the ground of the deceit is fraud practiced.
If the contract be respecting personal property &
the fraud is total - as where one sells a horse not
his own - it is not uncommon in such cases for
Chancery to interfere and vacate the contract
but where the fraud in the consideration is only
partial - as where a lame horse is represented to be
sound and sold as such - the contract of sale is not
void but the compensation must be made to the buyer
in damages. - is partial fraud in the consideration
where landed estate is conveyed is a sufficient ground
for Chancery to vacate the contract. But I think says
the judge that in principle it ought to be a sufficient
ground for rescinding contracts where personal prop.
is conveyed & it is probable says he that the time will come
these contracts will stand on different footing.

4711111

See Root's Rep.
Towers (see page)
7111111

There has been a trial lately to have the law in this respect altered in England. A made a contract with B to swap spans of horses - A gave a sum of money to boot between his own span and that of B's - but A by misrepresentation was cheated for B's horses would not go in A's carriage - Lord Ellenborough the present Chief Justice advised A to tender back the span he had got by exchanging - and bring action of trover for his own horses in the possession of B - and also for money had & received as boot. but the court said they should make no innovation in the law and gave judgment for the defendant. There is one kind of contracts which courts of law will set aside as when money is paid and the consideration turns out to be nothing at all, ~~by~~ pure unadulterated fraud. Here courts of law will go as far as to vacate the contract in an action for the money had and received &c. The same is the case where a forged order is received and cancelled. here an action will lie for money had and received. If a horse is sold which turns out to be no better than the skin it is not total fraud. The law with regard to partial fraud in England is the same as ours - but in contracts where personal skill alone is concerned our courts of law will destroy them wholly where the fraud in the consideration is total. There a man belonging in Washington in the

5p

State purchased horses and paid for them in bills of Contracts
exchange on Merchants in France which had been can-
celled (ie one of the file had been cancelled) - always paying a
dollar or the like in good money. Here the contracts
were set aside - the dollar being considered by the
court as colourable.

Contracts where fraud is practised upon third per-
sons are absolutely void in Law - This principle
has nothing to do with the equity of the terms but
it is founded on the ground of policy. as Where
B the son of A was about to be married to C's daugh-
ter - A covenanted with C to settle upon his son & on C's daugh-
ter - condition that C would settle the same sum upon his
daughter. but B privately covenanted with A his father
to release his settlement on condition that C pay his
wed - This last contract was set aside for fraud upon C.

An action will lie against one who falsely warrants
a thing or a person to be sound or wealthy - and
it is no matter whether ~~it~~ is the owner of the thing
warrants it to be sound or a third person. A con-
cealment of defects may operate as fraud as well
as the false affirmation of soundness - the maxim
being suppressio veri as well as suggestio falsi. A man
hire a horse to go to Salisbury and with a bona fide intent
to return with the horse but afterwards runs away with
him - no action of trespass lies. If a thing be taken but

Fraud

fully true with an intent to return the same again at the time agreed upon - no after thought or animus furandi will make it theft. Here the Judge repeats the case where the six pair of silk stockings were stolen - also where the supposed diamond was found &c.

(What follows here should have been introduced in the last page before brandenburgh's case)

It is our practice to plead the fraud as we would any thing else where the fraud is in the consideration and is total.

Courts of Chancery do not rescind contracts on the ground that the fraud is total - Where one is gulled by a mere trick - as where some sailors sold their share in a rich prize, being misinformed that the prize was not valuable - that a French fleet was out and would give but a small chance for the prize to arrive safe to the place of destination - Chancery interfered and rescinded their contract. The unreasonableness of inadequacy of price it is said itself is no ground for vacating the contract or relieving the parties. Justice must always be mixed with it. This inadequacy in most instances

1 Vern 405 shews a kind of evidence of fraud. This subject 1 Brown 176 has been lately agitated in England. see Brown - I do not

see the propriety, says the judge, of referring the subject

Tall. 38 of interest upon interest to this head. It is to be sure a

2 Lat 449 matter of oppression in most instances but it is to be

Tall. 38 viewed principally as a matter of policy for the Court

1265 510 to interfere rather than of equity. Where an undue ad-

30

advantage is taken of a man's ignorance - or of a weak Contract's
mind by another of superior powers of mind. Courts
of chancery in England will set aside the contract. 2 Wils. 155
But in the Barley corn case a new rule was introduced Sec. III
into courts of law - the court did not rescind the con-
tract as a court of chancery would have done & which
had they done it would have been perfectly right - but
instead of placing the parties in statu quo they directed
the jury to estimate the value of the horse and give
damages accordingly. If they were not conscientious
ly rescind the contract they should instead of sus-
taining the action have sent ^{the parties} to chancery.
They made the contract good to the extent of the value
of the article sold. - So where one takes advantage
of another's circumstances, a court will set aside the contract
as where A let money to B and by this means got B 2 Brown 162
well in his power - while their immiserable and oppressed
A obtained B's land at nearly half the value - This sale
of land was vacated in chancery. If the parties to
such contracts will after they become fully possessed
of a knowledge of their rights ratify them Chan-
cery will not set them aside.

As to Fraud upon third persons (see also page 164) Item 75
Under this head are ranked all that class of contracts 2 Term 114
respecting estates in expectancy. If an heir apparent or person
one who expects a legacy or devise alienates it before 1 Wils. 20

14th 520 the quantum is determined Chancery views the con-
 tract as being radically corrupt - and will accordingly
 set it aside - The person defrauded here is the giver
 of the legacy or the one from whom the estate descends
 14th 521 and it makes no difference whether he be dead or
 alive with regard to the validity of the contract.
 This rule seems to be founded upon policy, for an ex-
 pectant involved in debt might have advantage taken
 of his circumstances & for a present relief give up
 a valuable expectancy - -- A would not consent to
 the marriage of his daughter with B because B was
 14th 548 involved in debt - A to make sure of his prize made a
 contract with his brother and his father to pay the debts
 but at the same time gave a bond to his father & brother
 privately by which he agreed to pay the debt himself
 This bond was made void - B actually became as it is called
 a New man - This principle has been carried to great
 lengths so that where one pretended to convey to his son
 upon his marriage with B in order to induce the father
 or of B to settle as much upon her - this last settlement
 14th 602 after it was made was declared void. So this held at
 14th 640 so is reported that species of fraud upon the creditors of
 14th 675 a bankrupt or an insolvent person - where one of
 14th 696 the creditors will not agree to a composition of the debts
 14th 703 and the debtor agrees to pay him his whole debt proci-
 14th 763 ded he will agree to the composition for there can be

no composition unless all the creditors consent to contract⁵²⁹
it. The other creditors may have this agreement annulled
in Chancery - but if the composition is agreed upon
the debtor shall be bound by his agreement to pay
up this creditors demands. - And there will be no
difference if the debtor assigns over to another all
the matters. If matters of this kind had happened
upon the first institution of Chancery it is reason-
able to suppose that courts of law would have ^{had} juris-
diction of such causes. -

We come now to that kind of fraud which does not
absolutely vacate the contract - but for which com-
pensation is given in damages for the injury
sustained. It is often the case that an action will
lie for damages upon a contract with which fraud
is mixed when no action would lie upon the contract
itself. ex. gr. no action will lie for debts contracted by
gambling - yet if fraud is made use of - as by false dice
or the like these contracts will be either set aside or
compensation will be given in damages. It has been
questioned whether minors were liable for their frauds -
some say they cannot be because they are not li-
able for their contracts. The authorities on the sub-
ject differ materially. - The all seem to acknowledge
that an infant is liable for every other tort but that
of fraud - that he is indictable as a common cheat.

Fraud All the late decisions have gone towards establishing
 11th. 555 the rule that tortious actions are liable for fraud. & this
 12th. 553 seems to be the opinion of Mansfield and Stanger
 & thus says the Judge appears to be founded in equity
 and to this the old fallacious idea has justly given place
 11th. 559 A breach of an implicit promise is action. It is on
 12th. 552 the ground of fraud - A man in his profession as
 2nd. 559 lawyer calling - if he violates his trust as where a
 1st. 559 lawyer betrays the cause of his client - or a black-
 92 smith or farrier lames a horse by shoeing him or
 where a surgeon by trying an experiment with his
 new instruments breaks a man's leg - which had been
 before broken before and just begun to callosities. in all
 these cases an action may be brought on the ground
 11th. 551 of fraud. The most common fraud is practised on
 12th. 550 the sale and conveyance of property. The most
 3rd. 550 modern decisions go principally upon the footing
 11th. 550 of sound morality. The principle as now established
 90 seems to be that where one warrants a thing to be
 sound and good - and it proves otherwise he is liable
 to an action on this warranty and it is no matter
 whether this warranty be made by the owner of
 the thing or a third person - nor whether the person
 founded his warranty upon his own personal knowledge
 or not. If a man can show good reasons for believing
 the thing warranted to be true, he is excused. If the person

who undertakes to affirm a warrant a thing sound is ~~contracted~~
known to the buyer to be a liar no action will lie against
him. as where one affirmed that another was a man
of property on an action being brought against him it
was proved that he knew the man was not a man of prop-
erty also it was proved that the person who affirmed was
known to the plaintiff to be a liar. We find by the Au-
thorities that a mere ^{false} affirmation was not a ground
upon which an action may be brought. It now seems
to be settled as law that a man is liable for every false af-
firmation by which third persons are deceived unless this
affirmation be founded upon a full belief that the thing
was as he affirmed - and even here some reasons must be
shown upon which he founded his belief before he can be
excused. If a man have goods to sell and he affirms any
thing of them which is not true the affirmation in order
to subject him must have been such as to induce the
buyer to rely upon it & be deceived by it. It is not expected
says the Judge that people will cry out Stinking Fish - & the
will say he tell shop takes - and no injury be done. There
seems to be no difference among the Modern decisions in
England and our National & State Courts on this prin-
ciple. The affirmation must have been at the time
the sale - as where one offered a sword to a silver smith
affirming the hilt to be silver - the sword was not bought
then but afterwards it was bought at a less price - per cur.

See Jam.
This was the
case of the
Borough Stew.
where the plain-
tiff did not re-
cover because
the defendant
did not warrant but
only affirmed

12 Mod 11
11 Mod 102
11 Mod 91

3 L. Rep 51

See app.
11 Mod 414

no action
~~per cur~~

in fact 3. action will lie upon a warranty as such if the pur-
 chase be not made immediately afterwards - but the
 in fact 3. warranty will be considered as an affirmation - an ac-
 tion must be brought upon it as such - (u) an action
 on the case - on the ground of tort - Where there is a warranty
 the action may be assumpsit on the ground of contract.
 It is said by Blackstone that a mere concealment of a
 defect in the thing sold as well as a false affirmation
 will afford grounds for an action on the case. But if the
 defect is manifest and the buyer had a fair chance to
 discover the defect the seller shall not be liable. - If a
 man sells a thing which is in his possession as his
 own - and it proves not to be his own he is liable - But if
 he sells a thing at a distance not in possession - he shall
 not be liable. - A mere opinion of the value of the thing sold
 by which the buyer is deceived will not subject the seller
 the same is the case if he falsely asserts that he has been
 offered so much for it. But if he falsely affirms that he
 has received so much for it - or that others have given
 so much - he is liable to an action on the case - as where
 one affirms the rent of a house to have been sold per ann.
 when in truth it was but 20s - an action lies for this
 is a matter which lies in the private knowledge of
 the seller. It is stated in Christian's notes that if the buyer
 of horse discovers defects which were purposely concealed by
 the seller - and afterwards within a reasonable time re-

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lender back the horse - an action of assumpsit for money
had & received will lie to recover back the money
for say he the concealment of such a material cir-
cumstance is a fraud which vacates the contract. Hen. Bl. 17
If the seller warrants the horse to be sound whether
he knew to the contrary or not an action will lie upon
the warranty, or special contract found this even if the
Buyer does not make tender of him - or give the seller
notice of the defect. If the action be a general action of
assumpsit to recover back the price of the horse the warranty cannot be tried

How far a Master is liable for the fraud of his servant
The master is liable for the fraud and the torts of the
servants so far as the law will imply a command in 1 Salk 284
the master for the servant to do the act - as where a 2 S. 410
servant sells liquor which is detestable - but which the 1 Str 663
Master provides for customers here an action will lie a-
gainst the Master. But if the servant sold an unwholesome 101. ab. 95
horse as a fair for other merchandise no action lies against 143
the master unless he had commanded him to sell the 128
horse or other merchandise to a particular person. And it
seems that in neither of these cases an action will
lie against the servant.

As to alienation of estate with an intent to defraud 101. explain
creditors the law depends principally upon two Statutes 101. 10.
enacted in England in 13th & 27th Elizabeth and copied 131. 13.
into the Statutes of most of the States in the United States

1758
Conveyances
The law arising from the construction of Stat. 13 Geo. 3. c. 19. ~~relates to all~~ all conveyances of land made without valuable consideration when the alienor was involved in debt for the benefit of prior and subsequent creditors - by prior creditors is meant those whose debts were contracted previous to the conveyance - & by subsequent those contracted after the conveyance of the estate. If the alienor was not in debt at the time of the conveyance - but afterwards contracted debts - the law presumes an intent to defraud these creditors & this presumption cannot be rebutted for it is a rule in law that a presumption of law can never be rebutted, but presumptive evidence may be so often is rebutted, the presumption ⁱⁿ ~~juris~~ ⁱⁿ ~~facti~~ is the presumption of a Statute - that of the common law is merely called a presumption of law. - It will therefore be of no use to introduce evidence to prove that the alienor had no intent to defraud his prior or his subsequent creditors - for the law will ~~stand~~ ^{stand} their mouths. - It is the opinion of Lord Mansfield that this Statute has made no alteration in the common Law but has only gone in affirmation of it. - Whatever weight may be attached to the opinion of Lord Mansfield it does seem says Judge Ke. that there is manifestly a difference between the law as it now stands and the law as it stood before this Statute was enacted, for in the latter case subsequent

creditors could not come upon the estate thus volun- ³¹² Contracts
tarily alienated unless the estate could be shown to be conveyed with an intent to run in debt afterwards ³ 10th 83
and defraud these subsequent creditors. But by the Statute 10th
Statute these voluntary conveyances are fraudulent
as much against the claim for the benefit of subsequent ¹¹ 601
as the prior creditors. There are to this some exceptions
for if a voluntary conveyance be made & without any
design of defrauding his creditors tho it is never good
against the claims of prior creditors - yet it may some-
times be good against subsequent creditors - In order
that this conveyance should be rendered good in the
hands of the grantee against subsequent creditors
it must have been granted when the grantor was
not generally or greatly involved - not pressed with
debts - it must appear that he not only had property en- ^{10th 94}
ough to pay all his debts - but that his property was in ^{2d 13-1000}
such a state that he could pay the debts without em- ^{3d 411}
barrassment. ^{2nd} It must not have been granted to a stranger ^{10th 104}
anger i.e. it must ~~not~~ be granted to one whom the
grantor was in duty bound to provide for - one to
whom he stands in loco parentis - as a nephew or ne-
ice - wife or child -- ^{3d} The grantee must have been ^{10th 10}
at the time of the grant ^{4th} There must be no cir- ^{2d 13-1000}
cumstances which showed an intention to run in debt
afterwards & ^{5th} the debts must not have been created immediately.

Transferring to a man strips himself of his property entire
conveyance and afterwards contracts debts - it will doubtless furnish
evidence of fraud. And there may be no actual intent to
defraud creditors yet by an artificial rule of construction
if debts do arise it amounts to ^{a presumption of} an intent to deceive &
this being once established as law the grantor must
consider it as agreed for his conveyance to be defective.
This too a forcible construction of the word intent is
perhaps not a very unnatural one in the circumstances.
It is conceived that a man may be perfectly sincere in
conveying away his estate from his creditors as if
he had a valuable ship at sea & by her arrival would
be abundantly able to pay all his debts - he for the sake
of saving his land conveys for a while to a friend. other-
wise it might have been attached and sold for less
than its value - a great loss to himself. - This then seems
to be the conclusion that no one shall be allowed to con-
vey without valuable consideration his estate from his
creditors.

The law arising from the construction of the 27th Edw
relates to the title which the grantee of a voluntary
conveyance has - not that of a purchaser under the
grantor - nor also of a purchaser under the grantor.
At the beginning of the lecture this day the question which the judge gave yesterday
morning was presented to him to read for the evening - and so said that no one
else could rely upon taking the paper he had read said that he believed

his nursing he could not see it - but he could read it - & then went on to tell an anecdote of a Clergyman who upon writing to his brother clergyman and receiving no answer enquired the cause - the other replied that he received a letter some time ago but could not read it and presented the letter to another to read it to him - so he began to read it but meeting with a considerable difficulty gave the letter back and told him he could not read it - he should have got him to read it before it had got cold. ~ ~ ~ It is a rule well established in law that no conveyance of real estate shall be *valid* unless there be a valuable or good consideration a valuable consideration is where there is a mutual exchange of property - as money for land, ^{or marriage to be had} a good consideration is such as love affection ~~or marriage to be had~~ &c. - If A. conveys 500 l. to B. and B. conveys the same estate to A. for a sufficient consideration the latter shall hold to the former tho' he himself volunteers shall be defeated. This is the construction which has been given to the statute by the current of authorities. - tho' by natural construction and the opinion of some respectable authorities the volunteers title should be preferred. But if it be considered that the very offer to sell again after the voluntary conveyance is an evidence of the grantors original design to deceive the volunteer there can be but little doubt that this is the right construction which is adopted by the best authorities. Whatever would have been an intent to deceive the volunteer at the time of making

In ^{1080 cases} ~~1080~~ the whole conveyance is referred back to the time of the
 voluntary conveyance and the grantor is presumed
 to have originally an intent to deceive the volunteer.
 s. 44 With this principle the current of cases seem to tally.

A conveyance in consideration of marriage which
 is by law a valuable consideration - and one says the
 Judge as good as the cash - may be provided so
 that creditors may get hold of it. So does it from joint

were all paid to protect from the creditors ~~the~~
consequence must be made in consideration of mar-
riage to be had - a bare settlement upon ^{an} ~~a~~ wife will

Sept. 193 not bar the creditors unless the settlement be in pursu-
 Aug. 1844 suance of a agreement before marriage and made
 in consideration of marriage - even if the marriage

-189504 agreement before marriage is merely past consideration

Prich. 422 The non-performance of the agreement could by law
be enforced yet if he actually makes a settlement in
pursuance of the parole agreement it is good &

gainst creditors. If a settlement be made upon the wife with limitation over to his or her collateral relations, the limitation may be defeated by creditors.

If a settlement be made by trust estate as where the legal title vests in a stranger or any other co-tenant not in lateral relations and the equitable title in her and

Mr. C. upon his death to rest also with the legal title is volun-
tary as to the one who holds the legal title and liable to

be debited after her death but if the equitable title ^{contracts}
be limited to her issue it can never be impeached by the
creditors subsequent or prior in view of the Statute 2 Ves. 18
a settlement upon the wife in consideration of an ^{adequate}
equitable interest in right of her wife's trust estate Statute 64
will be valid if she had ^{sufficient} settlement previously. Polk 429
The husband is intitled the interest in the trust estate 1 Atk 138
of the wife (unless it be for her separate use of which 2 Atk 47
we shall say more hereafter at present). He may comp.
ell the performance of it in Chancery but Chancery 2 Atk 420
will not compell the trustee to pay it to him untill Polk 414
he has made an adequate settlement upon the wife 1 Ves. 339
but the settlement in this case may be extrava- 2 Atk 67
gant and of course be fraudulent as against creditors Polk 122
as if the whole of the husband's estate came by his wife Atk 121
and he afterwards settles the whole of it upon her. 2 Ves. 18
Therefore when the husband has done what Chancery
would have done or compelled the husband to do it is go-
od against creditors. But suppose a legacy were left
to the wife - the husband is undoubtedly intitled to it 2 Ves. 18
suppose also the husband makes a settlement in con- 2 Atk 140
sideration of this legacy it is good against creditors & Polk 548
purchasers - for if the executor should refuse to pay the ^{will}
legacy untill a settlement be made upon the wife the 3 Ves. 100
husband could not recover it even at law untill the 572
settlement was made because upon application to 2 Atk 512

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Fraudulent a court of chancery by the executor an injunction
will be laid to stay proceedings at law till an ade-
quate settlement be made upon the wife. The same
1 R.C. is the case with regard to the assignees or creditors
251-257 of a bankrupt's estate for they in this respect represent
502 the husband if the husband had the benefit of his pos-
sion but had neglected to make a settlement - or if the
husband had for a valuable consideration bound him-
self to make a settlement - the assignees shall allow
a settlement - and shall have no benefit of a legacy or
the like till such settlement be made. There are two kinds
3 R.C. 15 of choses in action equitable and legal - The husband
506 may assign over his wife's choses in action both legal
1 R.C. 251 and equitable - If he assigns the legal the assignees
2 R.C. 418 will be under no obligation to make a settlement nei-
ther would the husband whether he had the benefit of
them or not - but the assignees of the equitable choses
in action - as well as the husband are under obliga-
tion to make a settlement. The preceding rules relate
principally to real property but if a man conveys per-
sonal property under the same circumstances it
is paid within the statute but the difficulty is how
can the creditors get at the property. If A. makes a
fraudulent conveyance of a flock of sheep to B. & C. & D.
a creditor may get out execution and the officer may
lay upon them. If he can find them. Here's the difficulty

Tom & his might have reached them. There are some Contracts
cases where no remedy can be had against the donee
In one case it has been decided that a court of Chan- Amb 588
^{made by the donor}cery to refund the value of the property so granted. Vin. det. fraud.
No remedy can be had in a court of Law. This rule is Eq. last 49
perhaps founded upon strict equity. The next day of Fern 490
for the decision of the above mentioned question the
bar put a question to the court - viz. how far would the
court go in making donees liable to refund as if a man
make a present of a trifle - a watch or the like to one of
his children or relation. The reply made was that Co-
urts would not interfere in matters of this kind unless
the magnitude of the case was such as required their inter-
ference. From ~~that case~~ another question - suppose
the donor had made a voluntary conveyance of money
No one can expect to find the identical cash. - it cannot
be levied upon - I would be singular indeed to levy an
execution upon cash and bring it to the post and sell
it. You may go to chancery and there obtain an
order to go directly against the donee as much as
if the donor were dead. An officer may levy upon mo-
ney to respond a judgement. Why may not the Com.
Law be so modified that an officer may levy upon it
why need we be squeamish about making alterations
in the law - so that an attachment may go out against
money. - The reason why money is not leviable upon

I conclude ^{it} that it would lead to an abuse of the officers author-
 ity - must he take him down and rummage his pockets
 must he be permitted to break open every door in a
 house in order to find the money. Surely this would
~~be~~ expose the liberty of a man's person and his prop-
 erty to the honesty of an officer - a stranger - & pick
 pocket. It does seem to me says the judge that the L.
 Law is founded upon just principles - That a restraint
 of one person till he shall be willing to produce the
 money is sufficient. Our statute says nothing on the
 subject - And I am far from being satisfied that there
 ought to be a legal levy upon money. Where a weak
 man conveys his estate to trustees for his own benefit
 the legal title is voluntarily conveyed the purchaser
 does so not knowing that the weak man had conveyed it as a
 trust estate shall - & so as if the purchaser knew of the
 trust. Suppose a bona fide purchaser knowing the
 previous trust had paid for the whole & the weak
 man had spent it could the estate in the hands
 of the trustee be sold to refund the money. I think not.
 If a man has seduced a woman and conveys an estate
 to her as a premium public policy is good against creditors
 for the illegality of the consideration has nothing to do
 with it - but if an annuity is given for the continuance
 of cohabitation it is not good against creditors. -
 Suppose it is an infirm man & wishing to retire from

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business conveys to B all his estate for the payment *contracts*
of his debts. If there is enough and B is willing to pay
all the debts - all is right. - But in case of a deficiency *Ch. Ca. 248*
(or if there is no deficiency and they prefer it) The creditors may levy *1 Vern 510*
upon the land and consider it as a fraudulent convey-
ance. This conveyance must be to a stranger for if it be
one for whom he is bound to provide it is good against
creditors. But what if he had conveyed it to one of his
creditors? The general rule seems to be that if he had
thus conveyed it for the payment of his debts and the
debt of this creditor to whom he had conveyed it was
equal to or more than the value of the estate - then
the ^{whole} estate should go in satisfaction of his debt only -
but if the estate is greater than his debt - it should be
a fraudulent conveyance and liable to any of the
creditors - and the donee would be liable to lose the
whole until he sue out execution against the donor
before the other creditors have exhausted the estate
it may convey his estate by mortgage and it will
be good for the mortgagee may be purchased out by
the other creditors and then ^{they} levy upon it. - *1 Ch. Ca. 141*
the estate is conveyed to a stranger for the payment
of debts as above mentioned it is good against
subsequent creditors and purchasers whether they
knew of this conveyance or not. But a convey-
ance may be fraudulent tho the consideration be good

Fraudulent and the cash paid down, as where one purchases
 the estate of another with an intent to get it out of
 the hands of the creditors. This is a principle laid down
 by Lord Mansfield—founded upon good reasons and
 well established as law. A case of this kind occurred
 once in Warren in this State where a justice of the peace
 knowing that his neighbour was involved in debt for he
 himself had the day before signed two or three attach-
 ments against him, went with this neighbour of his
 into a neighbouring town (but it should be noised a-
 broad too soon) & there ~~found~~ he died & paid for the land
 this man immediately moved away and the cred-
 itors came upon the land & ousted this purchaser.
 A executrix died of real estate to B. without consideration
 & not knowing of this fraudulent conveyance purchases
 for a valuable consideration of B. Here arises a very
 great question whether it is a fraudulent conveyance
 in the hands of a bona fide purchaser so that the cred-
 itors of A. can levy upon it. On this question says the
 Judge I know of no direct authority to decide it. There
 is one dictum and a variety of authorities which go
 to establish the point that this purchaser under the
 volunteer shall hold against a purchaser under
 the grantor of the voluntary title. There have been two
 decisions to the point in this State. The first question
 came up directly before the court & there being only

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four Judges on the bench two upon one side of the just contract
and two upon the other the chief Justice being
in favour of the bona fide purchaser turned the ques-
tion but in his remarks he said inter alia that he wish-
ed this decision not to be taken as a precedent the
court being so equally divided and the question being
very doubtful. — This case ought not to have been re-
ported but it appears it is reported in Crook. — Again
this question came up before the court collectively
when there were five Judges upon the bench two of
them decided as before but three against the former
decision. These two cases says Judge there about bal-
ance each other so that neither of them have any
weight. There being no direct authority there in
the English nor in our own courts reason ought to
guide us to a decision. To allow this bona fide pur-
chaser to hold against the creditors of the original
grantor I think says the Judge would defeat an im-
portant provision of the Statute. For the prudent grant-
or in this case would look out for a purchaser if he
to keep his property out of the hands of his creditors know-
ing that as long as it remained in the possession of
the prudent grantee it ~~would~~ be liable and the
prudent grantee would sooner sell for a valuable
consideration than lose his estate therefore he could
have no possible interest in keeping it. In short

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Fraudulent
conveyances

it would amount to nearly the same thing as making a voluntary conveyance valid against the creditors of the grantor. Again, it is said that an instrument which is absolutely void cannot be rendered valid by any thing ex post facto, but a voluntary deed is also said to be absolutely void: therefore in this case the conveyance of D cannot be made valid. This says the Judge is too technical reasoning to have much weight. A note with a legal consideration or an usurious note is void in the hands of the holder and also in the hands of a bona fide purchaser under this holder - the the equity of this purchaser or indorsee is strong, yet the Stat. must not be defeated. On the other side it is argued that if or after he has granted to B has the power of defeating B's title by conveying it himself directly to C with a valuable consideration and so put it out of the reach of his creditors why may not B with A's consent convey the same to A for a valuable consideration so as to defeat the creditors if it also. This may be answered by saying that in ^{one} case ~~the~~ ^{the} end of course the creditors of A may be benefited but in the other the money all goes to B - but say they why not let the creditors of A come against B for the proceeds of the sale - This it is answered will not do for in this means this principle in law would be overruled.

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"that no one by operation of law should be con-
tracted to change his debtor." But it is also said
on the other side and the law has established it
that to a bona fide purchaser under a fraudulent
grantor may hold it against a subsequent bona fide
purchaser under the fraudulent grantor - how does
a purchaser in this differ from a creditor - A purchaser
in ordinary cases is not supposed to be positively injured
by the facts of getting the land he has contracted for - and
so it is true in most cases that a bona fide purchaser
who has paid for land shall have a preference to cred-
itors the purchaser having a special lien and the
creditors a general lien - yet in this case says the
judge the equity of the purchaser is not considered
equal to that of the creditor - besides here are no
creditors supposed the dispute is between two bo-
na fide purchasers - with respect to themselves their
equity is supposed to be equal but the right of their
respective grantors is not equal for the fraudulent
donor can hold the land against the donor. It is
my opinion says the judge that the purchaser un-
der a voluntary grantor cannot hold against the
creditors of the fraudulent grantor.

The fraudulent grantor is dead and the land is in the
hands of a voluntary ^{grantee} ~~donor~~ - how shall the creditors
get at it - they cannot sue the grantor for he is dead

Mandatum. They can't sue the heir or voluntary grantee
 Conveyances for these never owe them a cent. neither can they
 sue the executor for he has nothing to do with the real
 estate - this is not assets in his hands - nor can he
 or the heir sue the volunteer because this voluntary
 grant is good against the grantor & his represent-
 atives. The method practised in England is to or-

*In some cases, to constitute a suit nominally against the heir - one
 & sue executor
 & lay the execution upon the land of the voluntary grantee*

If the conveyance was of personal property there is
 no other way but to treat the donee as an executor
in de son test. In common law this voluntary grant
 is good against the grantor himself his heirs &
 executors in that capacity - but as the executor here
 is considered an agent for the creditors under the di-
 rection of the court of probate he may sue this vo-
 lunteer and recover the land - or the personal estate
 In the latter case an action of trover may be brought
 but he must prove that he has not assets to pay
 all the debts before he can recover. for this donee
 may hold against locators, devisees &c. and if there
 are no creditors his capacity as agent ceases & he can-
 not recover this voluntary gift.

§ 117 How far a donation causa mortis is considered from
 § 118 *dead.* A small gift of this kind might be doubted
 & held against but generally they are not.

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subject to the payment of debts & use when re-contracts
called assets in the executor's hands - not answer- 1 Pl. 405
able however for legacies.

A voluntary settlement is made which is void
against creditors and purchasers according to
the preceding rules - a covenant to perform some
act or be subjected to damages, previously made
is now broken - this voluntary grantee on whom
the settlement is made shall hold against the
covenant - but where a bond is given conditional
to pay a certain sum - this after chancery's decree
will be good against a settlement made after the bond
was given and before the breach of the condition
Even if the bond is conditioned to do some act and Kel. 499
the act is not performed the whole penalty may be P. Ch. 377
levied upon the settlement. This principle says the
Judge is founded upon the old and ridiculous ~~distinc-~~^{pro-}
tion that where the conditions were annexed distinctly
from the bond - it was a different instrument from
what it would have been had they been intermixed - be-
cause you might with a pair of scissors cut off the bond
and it would be a good - This says he is too technical
a distinction ever to have been introduced into the law.
There is no difference in principle between a covenant
to do an act with penalty annexed - and a bond
with conditions to do an act ~~with~~ ^{and} penalty

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Fraudulent. At the time the 15th Edw Stat. all the cunning of
Sale lawyers was excited to evade the natural construc-
tion of it. J.S. wishing to make a settlement upon
his son - fears to make a voluntary grant of one of
his own farms to him lest by some accident his cred-
itors would resort to it on failure of his own estate.

It will be no better if he buys a farm of Some other and
Enob. 530 gives this to him. - but he tells Tom thus if you will ex-
hibit. Fraud 2 ecute a deed to my son I will pay you for the land. In
2 Vern. 49 this case courts of law can give creditors no claim
2 Ch. 481 upon the land - but by a decree in chancery cred-
1 Vern. 76 itors may be let in upon the settlement as a fraud-
17 Ch. 14 ulent conveyance - If one give a voluntary bond to
10 Ch. 293 B - and B sues up the bond and obtains judgment or
625 if the giver confesses a judgment to B - this fraudulent
2 Vern. 202 and the grounds of the judgment may be enquired into
If a voluntary conveyance be made to B and after-
wards the same be made to C - & B obtains judgment
dand. 327 it may also be enquired into. See ignosc.

A owes to a sum of money - & C also - B sues A and
during the suit A pays C all he is worth which just
5 Ch. 235 satisfies his debt - and on the principles of the Com. Law
420 A had a right to pay which he chose to pay. he is not ob-
liged to pay in equal proportions. If it be decided this
executor must pay according to rank. He who carries
on the suit can in this case have no remedy.

A case something similar to this is found Contracts
in Leake's Reports 60-81 - where it owed B 400£ and Leake's case
6200£ - while the suit was pending between A & B - Sick B
A ^{made over} ~~passed~~ all his property viz to the value of 300£ to B.
But A kept the possession of ^{the} property and made use
of it as his own - sheared the sheep &c - & carried on
his suit against B & got out execution and levied it
upon the property in the possession - B claimed the
property and drove off the Sheriff - but the Court held
that it was fairly to be inferred that there was a trust
from his possessing and using it as his own - & that
that there was some collusive understanding between
them and that B by lying upon it should hold it
against B. This rule is founded upon principles of
policy - & not as some have said to prevent private
bargains. - transactions of this kind may be as well
carried on in private as if the parties were to get out
the drum and call all the neighbours together to wit-
ness the contract - It is to prevent ^{col-} illusive credit that
the law gives with jealousy one man's property in
the possession of another - a subsequent creditor
might have been induced to trust because the debtor
appeared to have property and a prior creditor mi-
ght have delayed collecting for the same reason till
it should be too late to recover. The policy of the rule
now seems to be to prevent creditors from being imposed

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In re
Sale

It is not always an evidence of fraud where one man leaves in possession of another his property as says the Judge If I lend my horse to my neighbour an honest fellow - to go to mill and he there tells a lie - says the horse is his and sells him as such - the buyer cannot sue against me because the lending of horses for this purpose is so frequent that the buyer ought not to have presumed that the horse was his. - But if I lend my horse to a man to go to Georgia and he rides about that State like a gentleman, dressed up, & after declaring it his own property sells it - I cannot recover it again but must look to the one to whom I lent it for damages

See more on this subject in Bailment } to where one who had been accustomed to drive cat- the to New York - sent them to Mr. Salmaige. the same who lived in Mass. in action against the cat recovered. If there can be sufficient reasons ^{assigned} why one left his property in the possession of another - as necessity or the like - the court will not consider it fraudulent (implied) The a voluntary conveyance may be defeated by a subsequent bona fide purchaser. yet it cannot be set aside by a subsequent settlement in consideration of marriage - in this marriage is not as good as work A covenant before marriage to make a settlement or articles for a voluntary conveyance the forms of chancery will enforce &c. courts of law

will not enforce a covenant for the execution of Contract
 a voluntary deed for instruments of this kind
 without a seal they consider no better than a trap 37. 4, 5
 nothing but bonds which are sealed they will
 enforce - because the seal itself implies a kind of
 consideration.

As to the Statute of Frauds and Perjuries

The cases under this head are divided into five
 parts viz 1. A contract by an executor or admin-
 istrator to pay the debts or legacies of a testator
 or an estate ^{out of his own pocket} will be binding unless reduced to writing
 and signed. Tho he promises to pay legacies and debts
 he is not bound to do it unless he has assets which he
 was bound to do before he promises if he should have
 assets - with regard to legacies however - if he promises
 to pay a legacy he is liable to an action at law on the
 ground of this promise and may be compelled to pay
 it whether he has assets or not. ^{dubito}

As to the 2^d part the general rule is that ^{no} contract for
 the payment of another debt will be valid unless
 reduced to writing - many cases in this part are ta-
 ken out of the Statute. If A owes B and B goes to C and
 tells him that he (C) will pay the debt, it is within the
 Statute and therefore void - but if he tells B to cancel
 his obligation against A - & B by this does actually can-
 cell it - it is hidden by his promise to pay & the case is

1. *travels of* taken out of the Statute. But if C says "I'll not pay
 2. *your* you, I will, the old security against it remains with
 3. *1801. 3. 22* B and it is withⁱⁿ the Statute. So verbal security
 4. *1801. 3. 22* by C will go in aid of B's security against it, but
 5. *1801. 3. 22* the verbal one must stand alone or not at all
 6. *1801. 3. 22* If C goes to the Store of B without and it takes up
 7. *1801. 3. 22* and C tells it that he will pay for them then B's
 8. *1801. 3. 22* becomes B's immediately & ex-presumo no action will
 9. *1801. 3. 22* lie against it unless the account was made out ac-
 10. *1801. 3. 22* cused in which case no action could lie against
 11. *1801. 3. 22* C. - So if after B has obtained judgement and got
 12. *1801. 3. 22* out execution against it - C by promising verbally
 13. *1801. 3. 22* to pay the debt takes up the execution or procures
 14. *1801. 3. 22* it to be taken up he is bound to pay the debt. So
 15. *1801. 3. 22* also if C by promising to pay the debt persuades
 16. *1801. 3. 22* B to withdraw a suit after it has commenced - C is
 17. *1801. 3. 22* bound - because in England the withdrawing a
 18. *1801. 3. 22* suit bars a subsequent one for the same debt
 19. *1801. 3. 22* but in this State a suit once withdrawn may be
 20. *1801. 3. 22* instituted again. There is one case where in a suit
 21. *1801. 3. 22* against it for an assault & battery committed on
 22. *1801. 3. 22* B - C promised to pay it provided he would withdraw
 23. *1801. 3. 22* the action - after it was withdrawn - B sued it on the
 24. *1801. 3. 22* ground of this promise - but failed
 25. *1801. 3. 22* All parole contracts for marriage settlements
 26. *1801. 3. 22* come within the Statute - & are therefore void.

4 All contracts for the purchase or sale of lands, tenements, hereditaments &c and the profits, interest &c arising out of them are void unless committed to writing. I have puzzled myself says Judge Reeve for 20 years - or at least for 12 to find how the idea got about that a parole lease was valid for a year or less. Timber growing or standing upon land is within the Stat.

Certainly it is an erroneous one for a lessor or a lessee may recant & withdraw himself from any such contract at any time. - But if the lessee by virtue of his contract takes possession of the lease he shall not be liable to an action of trespass - but he shall be liable for a quantum valebat. - A parole contract for the sale of land accompanied with a written memorandum signed by the parties will be enforced. If the parole contract was a mere trick to get any thing out of the other party it will also be enforced as 2 Freem. 268 where one by parole leased a farm for 20 years & Dover Co. 296 after the lessee had built a barn upon it according to Ven. 525 to the recommendations of the lessor - and the lessor turned the lessee off. - Chancery will interfere there and decree a specific execution of the parole contract.

Lands sold at vendue are not within the Statute Res. c. 18-221 (ie) are not within the meaning ^{of} the Statute. The 11 Wm. 3. c. 15 Statute was made to prevent injury to the contracting D. v. v. v. parties by cutting off all possibility of fraud or perjury. But a bidder at a vendue makes his contract as

4 Mills &
Rejures

34th 283

8 the value of
the other part
to some part
execution or
not pay
is sufficient
1 Bouv. 64

* 4
Bibb. 218
Cont. 500
509
Bibb. 574

5 Jan. 522
a baron
Session out of
court has been
adjudged sufficient
to make the defen-
dant liable - the
two things together
is enough to
show the
contract is
Swith 407

Talk. n. 61
183 hands brought
will be admitted
to not use the term
of the contract
but the facts
standing as an
evidence of
a whole agree-
ment all the in-
miller

It were before the world so that there can be scarcely any
chance for fraud or perjury. - It allude to blackacre in
consideration that B shall give him (A) ^{an acre of} whiteacre
it executes a deed with ^{this} consideration to B & afterwards
B will not give A a deed of whiteacre - nor if the con-
sideration be money - and the contract be executed
on one part and accepted by the other party. This
contract the parole shall be enforced. By what has
been said it will be seen that the statute is not now
any more what it was formerly than "the parsons
wheel was" - But further - any parole contract will
be enforced which can be proved without testimony
from third persons, to this particular contract. There-
fore if A files a bill in chancery for the specific ex-
ecution of a parole contract and the defendant by
his answer confesses the contract but pleads the stat-
ute of frauds & perjuries - it will be enforced. Somers
borrowed of J. Stiles 1000 gives his note for it and a deed of his
farm valued 10000 as an additional security - Upon an
action of debtment by Stiles - Somers undertakes to prove the
particulars of the contract by parole evidence - the
court stops their mouths - Somers then resorts to col-
lateral evidence - he first proves that he (Som) has had
interest upon the note of 1000 every year since it was
given - next that he has continued living upon the
farm ever since the deed was given & J. Stiles has

never said a word to him about rent - & damages contracts
further than this - he proves that he hired a ^{the very} place
last year and paid him the money for the use of it. By this time everybody thinks
it is nothing but a mortgage and so the court
say. - J. Miller gets some one to sell a farm of land
for him - the agreement not being written. Tom
takes the money and puts it into his own pocket
J. Miller in an action against Tom cannot prove
by parole testimony the contract between himself
and Tom - but resorts to circumstantial evidence
he proves that Tom had sold land for him before and
that he had always paid him the money. - But
suppose J. M. had employed J. S. to buy land for him
and had given him the money to pay for it - Tom
buys the land and takes the deed to himself - here
also by a bill filed in Chancery - & circumstantial
evidence J. M. may recover the land. -
5th No parole contract will be valid unless ^{it be} performed
within one year from the time it might first be per-
formed. It must be understood by the parties at the
time the contract was made that it should not be-
come due until after ~~after~~ a year. But if the time
of payment depends upon contingencies - as if one prom-
ise to pay a sum of money when his ship returns - this
will not be within the statute if the ship does not return within a year.

Parole contract -
that must be in
writing is excluded
not only on the
ground that it is
likely to be in-
correct but also that
it is liable to misun-
derstanding to par-
ties or their suc-
cessors

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 Francis & In addition to what was said under the 4th branch
 Perjuries of the Statute of frauds & Perjuries it is here to be ob-
 served that where a ~~contract~~^{conveyance} of real estate, and actual pos-
 session is given on the one part and accepted on the
 other - altho it be a parole ~~agreed~~^{conveyance} - Chancery will decree
 a specific execution of the contract - provided the con-
 sideration be sufficient. The real ground of this rule
 seems to be - that the buyer has depended upon the word
 of the seller - & has been at trouble and expence in
 moving - in short it is part performance of the contract
 So also if A sells to B (by parole) his farm - & B relying upon
 the word of A is by this means induced to sell his own
 2 Vern. 261 farm - or if one should (by parole contract) buy a piece
 of woodland - & upon the strength of this verbal agree-
 ment relying, dispose of his own woodland - Chancery
 will decree a specific execution of the contract -
 It seems by these examples that the particular cir-
 cumstances of the case are in a great measure to
 govern. - The contract to be binding must be sign-
 ed by the parties charged ~~therewith~~ - If one or both of
 the parties sign the deed at the top - if signed with an
 evident view to be bound - or if signed either thro mistake
 ignorance - or fraud in the place where the witnesses ma-
 gnes are signed - it will be a signing withing the mean-
 ing of the Statute - If the contract be expressly ~~stipulated~~
 to be committed to writing - tho it were equitable that a

if the parties form
 some contract to
 be signed by the
 parties & the
 deed is not the
 same as the
 16. & 17. sec 84

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performance of it be compelled yet this subjects the contract to the hazard of parole witnesses to the terms of it. Term. 167-9
There must have been some memorandum by which the terms of the contract may be brought to a certainty. There is one case where the memorandum not being signed was held to be insufficient. There is another case where A drew the terms of the contract and gave it to B to sign - B interlined and made some alterations and gave it to the scrivener to draw over - & afterwards B refused to sign - it was adjudged to be within the Statute. The law allows to the parties time, sometimes till they agree upon terms & actually sign. A covenant, made with A to sell a piece of land for 1000l - and B to pay the price for the land - B signs the instrument - A does not - It has been decided that B shall be bound - further if A accepts it after B has signed - and attempts to carry it into execution against B - it shall be good against A altho he has not signed it. - Or if A had acquiesced in it and acted upon it tho he has not signed it it will be good against him - Or if A had written the terms himself & B had signed, it will be good. The terms of an agreement written in a letter - shall be good against the writer if acted upon by the other party - Where A wrote the terms of the contract and before they were accepted or acted upon A rescinded his offer by parole - but upon finding the parties would not otherwise marry each other.

Truitt & he by parol agreed to stip the terms of the certain
 Perpetual as he had written in the letter, decree the contract valid
 against A for the parties had married. Where one by a letter
 1 Vern. 110-201 to a third person promises to charge his land with a
 2 Vern. 312 portion of 1500[£] on conditions &c and the conditions
 3 Mod. 3^d were performed the court decreed a specific execution.
 2 Vent. 361 But where it wrote to a young Lady that on condition
 2 Vern. 201 she should marry B - or rather that B should marry
 12 Co. 65 her ^{he would give her a portion} & she feeling some delicacy about her before mar-
 riage did not show the letter till after marriage.
 She court decided that this case was within the Statute
 for B not having seen or known the contents of the
 letter could not have acted upon the contract. Sure
 if it had been in the power of the lady absolutely to perform the conditions - the court
 undoubtedly went upon the ground that it was optional only with the husband.
 1 Vern. 34-200 The court have gone so far as to make an unsigned
 written contract for a marriage settlement valid
 2 Vern. 373 tho a marriage is not a sufficient execution or part
 10 Co. 404 performance to make a parol contract ~~between~~ the
 12 Co. 616 parties to the marriage for a settlement in any case
 1-6 Co. 361 yet it may be so when one of the parties to the con-
 tract is a third person as to the marriage. It has been
 7 Vern. 341 before observed that a selling ^{of land} at auction was not
 13 Co. 356 within the Statute - there are some modern authorities
 10 Co. 101 which go to establish the contrary. A wife's agreement
 1 Vern. 368 and possession given will be good against a sub-purchaser.

A lease by parol & six years possession will suffice. ⁷⁴ Contracts
by Statute of frauds & perf. from being plead. ^{2 Ho 783}
purchased by parol agreement - and a substantial
part of the money paid for it, will take it out of the ^{2 Eq ab. 46}
Statute as part performance - but 5 per cent on the ^{4 Ves. jun. 710}
purchase money will not. The money in this last
case is to be recovered in England by bill in chancery
but in this State by suit for money had & received &c.
As to parol contracts to be performed in one year &c
If one promise to pay a sum of money or do a cer-
tain act - 15 months hence - or if one promise to pay
money or do an act when a certain vessel returns
from a voyage - and the vessel cannot be expected
within a year - it is in both cases within the Statute.
suppose say the judge the contract is made when the
vessel sets out to go a voyage away up Archela sea &c &
all about there a sailing - then to the East Indies China & ab-
road the other way. - This would undoubtedly be within the
Statute. But if one promise to leave to another at
his death a sum of money - how long so ever & the time ^{Shaw 1238}
before his death - it will be good - as where one prom-
ise to give his house to her an annuity - & at his death
to leave her 100 £ - so where a woman sole promisee to ^{14 Sim. 48}
leave to another certain lands or 500 £ at her death if
she die without issue - so also if one promise to give ^{11 Rich. 280}
to another a sum of money at her marriage in all

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In these cases the more than a year had elapsed from
the time of the promise yet specific execution
6 Br. Pl. 58, was decreed. A written agreement may be waived
or varied by parole subsequent. - Quincy has gone
St. Jan 712 too far - says the Master of the Rolls in a dictum in per
inter L. Hall nothing part performance and other matters to
take cases out of the statute and then unavoidably
perhaps after establishing the agreement is a most
poor evidence of its contents. Part performance may
be evidence of some agreement but of what must
be left to parole evidence. The remedy ought to rest in
compensation. - a man having laid out a great
deal of money - does not prove he is to have a 99 years
lease - he must bring his action for the money.

If A by an executory contract covenants to convey
Flowd. 432 to B all the wool he shall purchase for 10 years. The
Feb. 132 property would not vest. - So if A rent a farm to B
the farm not being A's - it would not vest as a rent
But if A makes a contract with B for the sale of land
and B not owning the land at the time, afterwards B pur-
chases it - B will hold it by virtue of his contract. J. S.
bought of J. S. 500 acres of land - but 100 acres of this which
lay in the middle was afterwards discovered not to be-
long to J. S. - however J. S. sold it - and the court
very decree that it should go to J. S. A potential in-
Feb. 132 terest when disposed of by executory contract will vest

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As if one grants all the wool that will grow upon his CONTRACTS
sheep the next year - or the crops of corn that may
grow this year. - If A sells a horse to B - the money
to be paid and the horse delivered - next christmas &
in case the purchaser does not come after the horse
at that time the contract to be void - but before christ-
mas A sells his horse to C and receives the money - &
B not coming till after the time has elapsed and of co-
urse barred of his claim A brings suit against C to
recover the horse alleging that the horse was not his
when he sold him to B. It would seem that in point
of principle B ought not to maintain his action
- is that quality of contracts usually denominated
C. C. & J. D. & R. A. S. O. K. - there are no good
elementary writers upon the subject - Brevet has one
chapter upon it - but he is as in most of his treatises
too obscure. A consideration is that which moves one
~~person~~ to do or give something in return. and is
either good or valuable. Love good will or affection is
considered a good consideration. A valuable considera-
tion - is money - all kinds of property & marriage. So
every executory contract there must be a consideration
to render it valid. The quantum of consideration is no
criterion to determine the validity of a contract - It
must be a pecuniary consideration - therefore making a
loan or begging pardon is not a sufficient consideration

Consideration need not be advantageous or valuable to promisor if it operate to the disadvantage of the promisee - nor need it be advantageous to the promisee if it be disadvantageous to the promisor - nor (in short) need it be disadvantageous to either party - it may even be advantageous to both parties - as if A promise B that on condition that he will marry C. he will give him 100£ - here the consideration may be a loss or a benefit as the case may be - but it is presumed to be a benefit - If A promise to give B a sum of money provided B will get himself a new coat - it is questionable perhaps whether this is a sufficient consideration. Where there is no consideration at all it is a nudum pactum. It is not so with contracts executed - as if one ~~grant~~ give a horse to another and gives him immediate possession the horse cannot be reclaimed whether there had been any consideration moving or not. But if there had been no consideration - the horse would be liable to the creditors of the donor - if wanted - & not otherwise. These rules apply particularly to personal property - as to real property - it will pass where there is a good or valuable consideration - but if there be neither good nor valuable consideration it is said to inure to the grantor. It has been difficult for learners to discover what is meant by its inuring to the gran-

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Its meaning ^{is to be} better understood, from where Construct
it originated. During the wars between the houses
of Lancaster & York - great numbers of noblemen
and men of great landed property in order to
prevent their estates from being confiscated (to
which they were liable because this is consequence
of treason - & treasonable acts were at that time
very frequent) conveyed away to some obscure per-
son the legal estate - and reserved to themselves
the entire use - this could not be confiscated and
the holder of the legal estate - was not liable to com-
mit treason - The legal estate being granted away
without consideration - it was afterwards presum-
ed to be for the use of the grantor. Therefore when
there were no express words ^{for} reserving the use a
voluntary grant would never convey away the
equitable estate - or use. By the Statute of uses ^{the 27th Hen. VIII}
legal estate was transferred to the use-man if I may so & 1536
call him - and it therefore became entirely nugatory
to grant the legal estate away and reserve the use
because the legal estate would by operation of law
immediately return to the grantor. & this is all that
is meant by the word course in the English law. This ru-
le is not applicable to those States where they have no
Statute of uses - even if there were statutes of this kind
no reason now exists for giving this construction to them.

Consideration

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is void.

all executory contracts whether written or parole must be founded upon some consideration. If the contract be parole and no consideration moving, it is void. If the contract be written & no consideration expressed on the face of it - it is not void but parole, may be introduced to show a consideration - but if no consideration be made to appear it is void. If upon the face of the contract there is consideration expressed in general terms as is the case with common notes of hand & promise to pay & value received. So parole proof will be admitted to show in contradiction to the letter of the instrument that there was no consideration - yet as the consideration may be unequal be valuable in the case of the law parole proof may be introduced to show the nature & the quality of the consideration. There is no law to prevent giving in evidence by parole what will give effect to an instrument - but no parole evidence will be admitted to contradict what is upon the face of the obligation - if the consideration be definite at length in the instrument - and it appears to the court not to answer to any thing, it will be set aside.

If the instrument be a sealed one - it only a piece of wax be attached to it - a recovery may be had without alleging any consideration - the seal itself is a presumption of a consideration - and this being a presumption of law cannot be rebutted - This is a principle that

and that is all that can be said about it. ²⁷ ~~contracts~~ ^{contracts}
the fact of it no expulsion or intimation of a con-
sideration, ^{consideration} - but the covenantor binds himself his heirs &c
and in an action upon it the jury having nothing to do with
it no inquiry can be had into the damages, ^{or consideration} but
the whole sum as in an action of debt must be
recovered or none - A covenant to do a collateral
act sounding in damages has no consideration
but a seal - and in recovering upon it the jury
have to assess the damages which the covenantor
has sustained by breach of the covenant. Chan-
cery will never decree specific performance of a cov-
enant unless there appears to be some consideration
besides the seal. No recovery can be had upon a
promise or obligation for a past consideration - as
if I pay my friend in Shroton a sum of money to ex-
tricate him from trouble and upon his coming here
I promise to indemnify him - no recovery can be had
but if I had promised to indemnify him before or
at the time when he paid my friend a reco^r. might be had. Cro. J. 281
so if a man comes and to borrow for me without my request or knowledge and afterwards I promise to pay
him - this promise by the old authorities is not
binding - But by modern authorities it seems now
to be otherwise that if the past consideration be an
act beneficial to the promisor and the act be alleged one

~~considered~~ it will be binding on the promisor. There was once
 a case in this town sup. judge here where the land
 on this side of the road being owned by men in 8 years
 was sold at vendue and T. & by bidding so caused the
 land to be sold at a higher price than it would other-
 wise have been sold. T. & brought an action for ser-
 vices rendered - damages 200^l - the court could not ad-
 just it - nor says ^{he} ought they to have allowed it had
 there been a promise - for the act which he did was
 beneficial to the vendors - yet it was illegal and un-
 arrantable. If one does an act for another without
 any view or expectation of securing a subsequent prom-
 ise to pay will not lay a foundation for an action.
 But if a father promises to leave his son a legacy in con-
 sideration of previous services he is bound by a moral
 obligation to fulfill his promise. And in all case where
 exact sum is not promised - it shall be quantum meruit
 so where one is under no legal obligation - but by the
 influence of moral obligation - keeps himself under a le-
 gal obligation to do what is morally right he shall be
 bound by this subsequent promise. - as if one prom-
 ises to pay a debt which is barred by the Statute of lim-
 itations it is binding. So where one promises to pay
 for the board of an illegitimate child - having pre-
 viously given his consent to have her board out and
 there being therefore an implied promise to pay

It was decided that the natural father should pay contracts
the bond. Tho in a legal view he was a stranger.

as where application was made to an officer ^{to one}
for notice, in behalf of a pauper. the overseers Exp. d. of
the poor having promised to pay. they were held to
be bound by their promise. & says the judge it is
decided that they would have been bound to pay if had
then not promised. But where a widow who was well
provided for by her husband promised to pay his debt,
she was not held to be bound by her promise.

There are cases where an action for debt will lie with-
out formal notice given to the debtor. There are others
where an action will not lie without notice given
to the debtor. & others where a special demand must
be made before an action will lie. No notice is neces-
sary to be given where both parties or the promisor
only know the debt - the amount of it and the time
of payment. - as where S. B. sells a lot of wood to S. C. &
tells him he may have it at the same price S. B. gives br. p. 43
has given or will give for it. - here tho the defendant S. C.
does not know the price nor the time when it becomes
due, yet he may know as much as the plaintiff does
about it and may easily find out how much the pr-
ice is to be by inquiring of S. B. & no notice need be gi-
ven before suit. So also where one promises to pay to br. p. 44
another a sum of money upon his being married

Notice

no notice need be given before suit - tho says the Judge it
 were hard to sue the next morning after marriage - this principle
 is founded upon the idea that marriages are of suf-
 ficient notoriety - but says the Judge this case is hard
 to be reconciled with the general rule - & it is perhaps
 liable to be carried too far. - Where the Plaintiff does
 some act and the defendant pays money in consid-
 eration it is necessary that notice be given be-
 fore the suit is brought - as if J. S. living in N. Haver-
 had promised to give J. S. a sum of money provided he
 (J. S.) would go to Stockbridge and do a certain act -
 Upon J. S.'s return he must notify J. S. for he is not sup-
 posed to know whether the act is done & of course whether
 the money is due. So if J. S. sells to J. S. a load of
 wood the price to be the same as he gets for the rest of his
 wood - J. S. not knowing where to apply to find out
 the price - must be notified before suit is brought
 So where a debt is due and no notice is necessary to
 be given - if the creditor accepts an error on a third
 person & payment upon the error is refused - notice must
 be given to the debtor before a suit is brought upon
 the original debt. So in settling up accounts or
 a note of hand - if there is afterwards a mistake
 discovered - notice must be given before suit. It is
 generally true that where the debtor is wholly off from
 his guard - where he thinks not that he owes or if he

Hob. 51

Hob. 68

knows he owes - and does not know that it is his ²²¹contract's
duty to give notice must be given tho no special de-
mand need be made - a demand always implies a
notice and can never be made without notice -
The words often requested & demanded in a declaration - mean
nothing & are of no use - but only a formal part of the
writ - tho it seems that notice or demand is necessary
to be stated in the declaration - and if it be omitted -
the defendant may demur - or plead in abatement & ^{Daugh. 60/1}
if his counsel had overlooked the omission it will be ⁵⁰
good ground for an arrest of judgment. But where
the declaration is only informal & a verdict of the
jury is used to cure the writ or declaration - it is otherwise when
something is entered on the record. Upon rehearing the words often
requested & demanded Judge Keene said it put him in mind of a
circumstance which once took place in this town - and he then went
on to tell an anecdote of a clergyman in Torrington
who came to Col. Adams of this town and requested him to draw a writ of
slander against one of his neighbors - the writ was drawn accordingly
and upon reading in it a clause like this - "by which the plaintiff's
reputation and character were greatly injured - & not
only loss of reputation but of the good will & friendship
of his neighbors. The clergyman exclaimed in reply to the Col. that
there was not a word of truth in it. I have not since lost my reputation - nor the
good will of my neighbors - or friends - so the Col. knowing that this was not necessary
to be inserted erased it - to please the clergyman with whom he intended to have some sport

Police But as the clergyman read on he found these words. *The officer*
Demand - *guarled and demanded* - Who told you that said he to the
 tel. There is not a word of truth in it. I never asked the man for
 damages - I will never suffer a writ with such a tissue of false-
 hoods to go out in my name - however the writ was served with
 these words in it tho so strenuously opposed by the clergyman - This
 anecdote so humorously told and so graced by the judge set most of all
 all in an uproar - and his voice notwithstanding his exertion to over-
 power his natural weakness and indistinctness was almost drowned by the
 confusion of noises. - As to special ~~demands~~ *Demands*
 there seems to be no precise rule laid down in the
 books when it is to be made. It is said that if the right
 is precedent no special demand is necessary - but where
 one is to do a collateral act on demand - not at his
 own election - he is not bound to do it until a special
 demand is made. These rules do not include all the
 cases to be found in the books - but says the judge I have
 framed a rule with which all the cases I have ever
 seen will tally - which follows viz. If from the nature of the
 contract the promisor can discharge himself by tender no special de-
 mand is necessary to be made - in all other cases a demand must
 be made. - So if one promise to pay 20^l or 20 bushels
 of wheat on demand - he can by tender discharge
 himself and notice only is sufficient before the action
 is brought. But if a note of 20^l is given to be paid by
 carting for the promisee a demand must be made

Engl. 136

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2. 136

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Here the promissor cannot tender - for if he goes contracts
and gets a 2 dozen of ^{his} neighbours with their teams
and parades them before the promisee's house and
tells him "he will cart for him now". But the prom-
issee is not ready - & the promissor must wait till
he is ready - and gives him notice or makes a spe-
cial demand. So if a blacksmith promises to pay
20£ in his work - he cannot tender to the promisee
chains horseshoes hooks brannels &c at his own election -
of course the promissor cannot pay till the prom-
issee makes his election and need not pay till a spe-
cial demand is made. A singular case once hap-
pened - says the judge in Harrington where a Merchant
who upon receiving produce from the country prom-
ised to pay part in money, & the part in goods. after-
wards being offended with his customers and not care-
ing to have him select the best of his goods and by this
means clearing his assentment - turned out to his cred-
itor - 2 bolls of Brimstone - & this not being enough he
made up what ^{was} wanting in Quincburg wheelstones
The court said he was not obliged to take them but
he might have his election from his store of goods
or their value in money at the election of the Seller.
Among the contracts ineffectual to be recovered upon
in law - were formerly reversion bonds. (ie) Where a
bond was given with conditions to convey land

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Bond to pay money or to do - the formerly the whole pen-
alty was recoverable at law - yet now both Chancery
& equity and law courts will relieve against the penalty.

9. 12. 62 Where the penalty is in the nature of a fine or damage
or the penalty is small - and only a compensation for
the injury sustained by a breach of the condition.

At the law formerly stood if a man gave to his in-
tended wife a bond - or gave her one after marriage
it was void in the latter case immediately and forever

2 Ver. 480-157 & in the former case it was void upon marriage.

2 R. & C. 243 But an agreement was always good where made in

2 H. 97 contemplation of marriage - It seems now to be settled
that a bond given by one to another and they after-
wards intermarry - is good in equity. If joint ob-

2 Ves. 371-4 ligor pays up the whole bond - he may by bill in Chan-
recover the co-obligors quotas - Sure may he not bring
an action at law against the co-obligor - See 2 Ves. 560

In this state an action on the case is brought at Law.

Tho a chose in action is not assignable at law yet
in equity the husband may assign his wife's choses

3 R. & C. 608 in action for valuable consideration. - Payment of

1 Hag. 685 of a bond to the obligee after notice of an assignment

2 Vern. 540-544 is not good. A gives a bond or note to B - & B indorses it

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over to C by a writing on the back of the note - & becomes
a bankrupt - the bond is good against A. - Where money
is received in conformity to an award of arbitrators

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as payment for land to be conveyed according to the Court's
award. Chancery will decree specific performance 11es. 445-457
So if A by an award is to convey a piece of land to B for 6es. 189
the consideration of 900^l and if after submission B 11es. 535
in order to raise the money sells his own land Chancery 2 Km 24
will decree specific performance.

Actions on Contracts & Assumpsit
These are ^{1st} actions in Common Law & 2nd those in Equity
In common law there are 2 kinds of actions, the one ^{of assumpsit}
is founded upon express contracts, either written or oral
and is called special assumpsit - the other is found-
ed upon implied contracts and is called general or
indebitatus assumpsit. By express contracts are meant
those where the terms of the agreement are mutually
assented to by the parties. Implied contracts are found-
ed upon a duty or an oral obligation which creates
a promise by implication of Law. There are many
cases where one is under a duty bound to pay money and
no promise (according to the common acceptance of
the term) can be supposed. - as where one finds the prop-
erty of another - where one obtains the property of another
or by fraud - or force - or if a man turns his wife out
of doors and forbids any one from trusting her on his
account. In all these cases general assumpsit will lie
in favour of the party injured the ^{express} promise on the
other party to redress the injury can be supposed.

Assumpsit An action of assumpsit will lie in all cases where a man ought in justice and good conscience to pay money to another except where policy forbids the interference of law - as debts contracted by gaming - debts outlawed by the Statute of limitations &c.

The form of the action of special assumpsit is the same whether the contract be in writing or parole.

It is not necessary to state in the declaration that the contract is in writing. - An implied contract may arise from an express one - as if one expressly agree

to employ or hire another to do labour - a contract or promise to pay him as much as he earns is implied &

an action of assumpsit on a quantum ~~convenit~~

lies. So if one goes into another's store and agrees to take goods - if the goods are taken and no price be stipulated

the taker is liable to an action of indebit. ~~assumpsit~~ on a

2 Burr. 1012

2 D. 1010

quantum valetat. Where the contract is express &

the sum to be paid is specially agreed upon - the creditor may bring an action of special assumpsit or indebitatus assumpsit at his election (for indebtedness

~~always~~ makes an implied promise to pay) or he

may find an advantage in stating the contract in

both ways, for in this case if he fails to make out an

express contract - he can resort to the proof of an im-

plied one. So the action of debt (which has now gone out of use)

is concurrent with these. Assumpsits have taken the

the place of the old action of debt - for in the action ^{Contract} of debt unless brought on the ground of fraud the defendant by wager of law (ie by the oath of himself & the oaths of eleven others that they believed he spoke the truth) he might exonerate himself. In the State of New York say the Judge fearing lest the old wager of battle should be introduced a statute was made expressly forbidding ^{the} an action of assumpsit or debt can be brought on a promise to do a collateral act but it must be an action on the case for special damages. Assumpsit may be concurrent with trover or trespass - as if A buys a horse of B & B goes to C & sells him. assumpsit will lie - not on a quantum valebat but the price for which he sold must be the rule of damages but if trover is brought the damages must be quantum quantum valebat. So if money be taken away from one by violence - not so as to amount to Robbery the party injured may have an action of trespass vi et armis or assumpsit. so also if one obtains the money of another by fraud - an action on the case on the ground of fraud will lie or he may have an action of assumpsit at his election. There are cases where ^{2. Id. 260-3} assumpsit only will lie - as if the consideration to be ^{15 B. 32} received turn out to be nothing - so also if money, ^{2. Id. 260-3} which cannot be identified, be found. no tort or fraud being supposed - no action but assumpsit will lie

assumpsit will lie in all cases where one has ^{received} money which he is in justice and good conscience bound to refund or pay over to another unless in such cases where the law upon principles of policy refuses to interfere. Where a man had by deceit married a second wife while the marriage with the first remains ^{undissolved} - & had ^{received money for the rent of his house} paid her money to stay with ~~her~~ ^{the money} the money may be recovered by bill in *assumpsit* or *assumpsit* at law. Where a man ^{promised to loan money to another} ~~loaned~~ ^{the loan was made & the money was paid} *assumpsit* lies to recover money paid under a void authority - A owes B. - C forges a power of attorney in the name of B and vests it in D - D collects the money of A & pays it over to C - & C has absconded - B sues A and recovers - A has now paid the same debt twice how shall he get his remedy. I was an honest man & knew nothing of the forgery - & C has gone off. if C had not gone off he would be liable. because he was the principal and I the agent - if I had not paid the money over to C then I would be liable and by the decision of the court in the present case shall be answerable tho he has paid over the money. But the main difficulty seems to be in determining when the authority is void. on this point there are two authorities which have been thought to clash but says the judge it seems to me that they can be reconciled. The case in *Salk.* is one where one had -

1 *Salk.* 3.

Palm. 365

1 *Salk.* 2

1 *Str.* 59

4 *Barr.* 1784

1 *Salk.* 27

5 *Str.* 125

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taken out letters of administration and under the ~~authority~~ ^{authority} of the court had collected some of the debts. afterwards a will was found and the letters of administration were revoked. The court held that the administrator ^{was} liable to action of assumpsit tho he acted under the authority of the court which authority can never be void tho the court is liable to be imposed on as individuals in this way. If he had paid over the money collected to the creditors of the deceased he could have been no more liable than an executor de son tort. The case in ~~the~~ ^{Terry's case} was where after letters of administration were taken out and part of the debts collected - a will was forged by a Mr Brown in which he (Brown) was appointed executor - the will was established 3 Tr. 127 and the administrator after letters of adm. were re- 12 Bay 42
voked paid over to this executor what he had collected - and the court said he was not liable to an action because he had no assets in his hand and tho he paid it to a wrong person he had the authority of the court to direct him. But if A owes B and C by paying an order in favour of himself against C - A tho he accepts the order and pays the money to C is liable in an action of assumpsit to B. - because A paid it of his own free will - without the authority of a court.

Assumpsit In cases of extortion oppression and undue advantage
 taken by one party - where Chancery will rescind the
 contract as where plate had been pawned for 20£ and
 the pawnor wishing to redeem the plate offered 4£
 2 Str 915 over and above the 20£ which was more than legal
 interest. But the pawnor demanded 10£ over and above
 the 20£ - the pawnor paid it and brought assumpsit
 Reg. 657 for the 6£ which was held to lie. So where a wife paid 10£
 so also where bankrupt in making a composition with
 his creditors agrees to allow the whole debt to one
 J. Kipps who by his obstinacy would not otherwise agree to
 the composition - if this money has been paid assump-
 sit lies to recover it. - In England if one obtains the
 money of another by a felonious act - as by stealing
 no action civiliter can be brought by the party to
 recover the money because his goods and chattels
 are all forfeited. Actum will lie for the penalty. This rule
 is not known in this country - because we have not
 adopted the plan of forfeiture - no doubt but a man
 may here bring an action of indebitatus assumpsit
 for money stolen. And even in England they virtually
 make a thief liable in some cases in an action of as-
 sumpt by stating entreatment. So if a servant takes
 the goods of his master - it is not theft because he was
 trusted with the goods - and in an action of assump^t the
 entreatment is stated. The nurse of a sick man

Exp. 5

having taken money from the drawer of the sick man ^{contracts}
assump^t was held to lie for the recovery of it - the one B. & P. 130
would hardly suppose the nurse was intrusted with
the money in his possession. If money be embezzled
as by a clerk of a store and conveyed away to a bona-
fide receiver and for valuable consideration no action
can be maintained to recover the money of this
person unless it were paid on an illegal contract on
the part of the receiver. as if the clerk had paid away
the money for the insurance of lottery tickets. here
the clerk has done nothing contrary to law in paying
away the money to the lottery officer. - But the Stat
12 Geo. III - sec 3 expressly enacts that the receiver of
money ~~for~~ the insurance of tickets shall be sub- ^{Group. 197}
ject to a penalty. - It is admitted says Judge Burre that
he by this means commits a crime & is subject to
the penalty but why he should besides being ~~subject~~
to the penalty - be also liable to refund this money
I do not see. - So if money be taken out of the post
office. - or if money be found - the proper action is assump^t
indeb. - Where judgment is had and the execution B. & P. 151
is paid up - this judgment being reversed by an ^{Group. 419}
court above - assump^t lies for the money paid. A
curious case is reported in Burrow - Gore which has ^{25. 1006}
been misunderstood misapplied abused & reached m
ore than cases in general - There was two 40 Shilling-

bank notes which he & McFarlane (to whom he assigned them) turned them with a warrant of ~~know~~ were good for nothing - McFarlane covenanted with a penalty of £6 never to return them to Moses - afterwards McFarlane sued on the warranty before a court which had cognizance of matters only to the amount of 40 shillings and recovered one at a time. Moses could not produce his covenant in defence for the penalty was £6 being of greater value than the court had cognizance of. Moses brought an action of ass't in the court above - & recovered the money back again. It will be seen here that the judgment of the court below is not impeached but only such new matter brought into operation as would justify a decision to the contrary - But a case happened once in this state where a man in Windsor sued another in Simsbury and recovered the man in Simsbury brought an action of ass't before a justice in that place and recovered back the money - another action of ass't against him & a recovery was had &c - here the grounds of the decision in each court were directly impeached by the other which can never be allowed as law. - It has a vessel going a voyage of 3 months gets her insured - 18 months hence she not returning he sues the insurers & recovers - the next week she re-

turns - an action of assumpsit will lie for the recovery of the money paid in pursuance of the first judgment and grounds of the decision will not be impeached

A man in Sharon owes another in Hartford on a debt of 10£ - but states in declaration to be 50£ notwithstanding the promise that no more should be recovered than the true debt execution went out for 50£ & the defendant was obliged to pay - If he

under took to have a new trial it would cost a good deal - for as 10£ at least would in that case be recovered he would have the cost to pay - an action of assumpsit was finally brought for the 40£ surplus.

Where an express contract is performed on one part and not on the other - as if it gives to a sum of money to pay over to C - & B does not pay it special or indebt. assumpsit will - but if to had given it a receipt for the money - in Connecticut the action must be brought on the express contract but at Gen. Law the action of indebitatus assumpsit will lie - In a contract in the transfer of stock the other party had paid 200£ down - ind. ass. will lie *St. 406*

Where both parties to a contract set down pari delicto to break the laws of society - no recovery can be had for money paid by one to the other. *St. 406*
If the contract be illegal on one part only and the other party paid money on it contract it may be recovered *St. 406*

Assumpsit Indeb. ass^t is the action to be brought for the
 recovery of penalties created by bye laws in corpora-
 tions - Fees of officers are recovered in this
 action - Lawyers physicians &c. &c. &c. The
 action to recover upon an award of arbitrators
 is indeb. ass^t as the case may be. A & B submit
 their disputes to C. E. to determine. - These arbitra-
 tors cannot issue execution to compell payment
 of the award - indeb. ass^t is the proper action
 to be brought altho they sue before the award en-
 tered into a bond or covenant to abide by the award
 But if the parties bind themselves by a bond to
 pay after the award is made - or if they take security
 of each other this is a higher remedy & must be
 pursued - and this is the case always where a subsequent
 security merges the prior implied contract, or pardon.
 If one agrees to build a house for another - & ~~agrees~~
 a bond with penalty for non performance - tho
 the bond would swallow up the previous contract
 if parole - yet if written - an action of ass^t will lie
 upon the express contract. Assumpsit is the action for
 money loaned. - account. Where the account is
 liquidated - insinuat comburment - in England
 courts will never inquire into the items of the ac-
 count. It is true they never in England nor in this
 country suffer accounts on an insinuat comburment

to be unrevoked but where any mistake is discovered ^{contracts}
and so that the accountant can lay his finger upon ^{intention all}
or it is the constant practice for courts to inquire
into it - and cause the error to be rectified

Assumpsit upon sales is both special & indebitatus
If a vendor sells what he has no title to and receives
the consideration - the action to recover the money
is indebitatus assumpsit provided there are no
warranties. It appears to all have to do with assumpsit
give as much for it - and pay down a deposit of 100
afterwards to find that it will be under some con-
ditions & if the purchaser he does it with some
degree of notice - besides himself & the wife - The
finder in this case may sue upon the implied war-
rantee which will have to make out - or he may
bring an action of assumpsit for the deposit at
his election - or if the land be conveyed, it must
be good - or if the thing contracted for is personal property
which can be stolen - unknown to the vendee an
action of assumpsit lies to recover the deposit. In
sales at auction the written or printed terms are
to govern - Therefore when goods are set up - the
printed terms being that they were free from all
incumbrances the declaration of the auctioneer that
there is an incumbrance - will not be allowed in
proof to recover of the vendee - But if the

10. 11. 11. 11. vendee had deposited part of the payment he shall not be allowed to retract afterwards unless he will give up the deposit - & even in this case as the law stands now (says the reporter in Pl.) he cannot avoid the bargain. There appears to be a case so long ago as the reign of James - the defendant had been decided - to which one would conclude that the law was then such that if one bid at an auction - he might recel his bid at any time before the hammer was knocked down - and the goods struck off. - What the law is now may be seen from 3 Term Rep. 825. 148 If the vendee does not take away his goods they may be set up again - and if they are sold for less than before he is liable for the difference in price. 10. 11. 11. 11. This rule applies only to cases where by the terms of the auction the ^{goods are} left till after the specified time of payment is past. When the terms of the auction are to sell to the highest bidder. the vendee cannot 5 Term 508 avoid his purchase by a plea that there was a bidding for the seller - (or an unbidder -) - If one carries goods to an auctioneer to sell with conditions that they be 10. 11. 11. 11. not struck off under such a value - the auctioneer tho he sells them for less is liable - because the terms of the auction were to sell to the highest bidder and it would be an impossibility in the public to withhold from one who had bid the highest. but if the auctioneer had promised

promised not to set aside under such a bid he contracts
shall be liable if he violates his promise. An auc-
tioneer may sue in his own name for the price
of the goods bid off. Because he is viewed as a public
officer - not as a servant. He has a right to his com- 1 H. Bl. 81
missions - is not obliged to look to his employers for
his pay - but having a special property in the goods
he may lien upon them till his just commissions
are paid. ~ ~ ~ Where a contract is entered into
by the parties - and it is not yet completed - re-
maining in fieri - no possession given - if there
has been a concealment of defects - or the title is
under embarrasment - the contract may be
waived by the vendee - but if the contract is fin-
ished - the property delivered - & the possession passes
the contract cannot be set aside - the remedy must
be had in damages. If there is a condition annexed 10 H. Bl. 153
to an agreement - to which the bargain is to be re-
voked in case of the discovery of defects - the parties are
bound by it altho possession had been given. - If I
sell a span of horses & warrant them to be 4 years
old only but they prove to be 5 - an action may be had
upon the warranty and damages be recovered
so where it was a span of horses to be for 20 guineas 10 H. Bl. 23
with liberty to return them if they did not suit within
in a month - he returned them but instead of demanding

Assumpsit: the 10 guineas - took another span - these he re-
turned also - & took a third span which he ^{ought}
to return - but upon ~~the~~ ^{his} refusing to take them
brought an action of assumpsit for the money but
it was held not to lie - because the contract was
open still. The greatest difficulty in my mind
says the Judge is why the court should say that
the bargain was open - was it not closed upon the

15th Br. the return of the first span. If one purchases a
17 horse and pays the money for him leaving him
in the possession of the vendor - the vendee may
bring an action of trover for the horse or of ass.
for the money paid. This is where there is a legal
possession given - but where a manual posses-

18th Br. sion has been given - no action will lie for the money
not received - and this is the only distinction
between a legal and a manual delivery. If the
Vendor undertakes to deliver the goods to the
vendee in his own way he is liable for all miscarriage
but if in a way directed by the vendee - then - the ven-
dee is liable only. - As to the closing of contracts
If the vendor agrees, for consideration received, to
deliver property to the vendee at some future time
this property will rest - and the contract is closed
if he asks a horse - to apply to him - asks if he will sell
his horse. A says yes - how much will you take

for him says B. 20th said - I'll give it re-contract
B. - here the bargain is not close - but
as it stands either party may close it - on the
one part by tender of the horse and on the other
by tender of the money or any part of it. quere
whether in this state of the contract either party might not
retract and so destroy the contract. ^(not) If it appears to sell
B a horse for 20th & to deliver it within three
months & to pay the horse and pay for him two
months hence - tender on either part by the day
or at the day appointed will close the bargain
and make the contract binding - but if neither
did tender by the day or at the day appointed
then the contract would not be binding. I know
a case once argued there before the court in this
county where a man had by a written agreement
bound himself to convey to another a Shop certain
time afterwards for the sum of 200th the vendee
on the other hand had by another written agree-
ment bound himself to give 200th for the Shop
to be paid at the same time. There were two concu-
rent acts - it was not determined who should ten-
der first - and neither of tender by the time a-
greed upon - so that the bargain was not closed - one
said the other on his agreement & the other said
I'm under him - and both were before the court at

1841 M² the same time. The court said that nothing
 1842 them were binding - and the parties were left in
 statu quo - to close their bargain if they chose to.
 Special assumpsit is the proper action to be re-
 1843 sisted upon wagers. It has been doubted whether
 1844 one could in this state recover upon an as-
 sumption for the recovery of a wager. No decision has
 been made upon wagers - actions have come
 up two or three times before the court but the
 parties have always compromised - without the
 decision of the court. There are now the judge
 submit what remains and the court should not
 sustain actions of this kind as well as those
 of gaming - If the wager were promissory
 it could be recovered in contract. It also if the
 contract be an immoral or fraudulent act - by which
 interest or compensation ^{may} be introduced - as
 1845 Comp² 29 where a wager was laid that the African slave D'Con
 108 was a male. Yet was the judge then may be a case
 1846 3 M. Co. where the court were much more than a time flustered
 as if a female were always kept dressed up in man's
 clothes in order to receive an estate as her male.
 The action of assumpsit on words reserved
 whether the case be by words or in writing - has
 been introduced in England by a statute and the
 rule of the court is what was agreed upon to be the

sent between the parties. But in this State where contracts
there is no debate of the kind - the law is now
the same as formerly at will - and where no
terms are agreed upon damages must be as-
sessed - on a quantum meruit (*quantum meruit*)
In the declaration as upon ^{injury} ~~contract~~ - it is not
necessary to state that the agreement is in
writing - but the writing in this case may be pre-
sented on trial - and be given as evidence. In
this State we treat notes & bonds as contracts in the
declaration - and they must be taken to be in con-
tract - & yet non est, ~~contract~~ may be pleaded in the
general issue. This is the case with all agreements
in writing not under seal which are the judge
is an infringement upon the common law.
If the obligor of any bond makes a special promise
to pay the contents to an assignee of the obligor
and this promise is written on the back of the bond
and signed - an action of *indebitatus assumpsit*
will lie to recover on the bond - & the assignee may
bring the action in his own name. It is said that
the ~~rule of the court~~ ^{rule of the court} does not apply here, but that
where a note or bond was given to one or other - the
obligor promises the obligee to pay him or her or
because to pay his assignee and therefore the action
must be brought in the name of the obligee.

Example: I report of principle in the judge there seem
 to be no ground for such a distinction as this. By
 the Statute of 1791 ~~the assignee shall be allowed~~

to sue upon a bond in his own name. ~~And~~
 Sec. 42- ~~however~~ but the construction of the Statute

and I conceive that this Statute is only an affirm-
 ance of the common law ~~doctrine~~ ^{doctrine} of this
 construction. Judge Kenyon of Vermont where
 they have no Statute of this kind has decided that
 upon the principles of com. law the assignee
 or the holder of a bond or obligation may sue
 in his own name. If A has money belonging to
 C and pays it to B with orders to pay it over to C

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& B fails to do it. it is a settled point that C can
 bring an action of indebitatus assumpsit against
 B for the money. And it is a general rule that
 assump. will lie to recover money unjustly &
 unconscionably retained against the plaintiff
 yet in one case it will not lie because the title of
 land cannot be tried in this action. A takes B's
 cattle damage feasant - & says he has a right of
 common - but he pays the damages and redems
 his cattle - If he brings an action of assumpsit
 for the recovery of the money - he cannot main-
 tain it. because he must before he can recover ^{the assumpsit} prove that

Assumpsit will not lie where the debt is due. Contracts
by specialty - for in this action it is necessary to enquire
the for what cause the debt became due or judg. 413
must once be arrested - but in specialty debts (the 102)
consideration is not enquired into. It is sufficient
to bind a rent to collect - to enter into a contract to ac-
count - it brought assumpsit for the money as
paid as it was collected but it was held not to lie 2 D.R. 485
because he had a higher remedy - viz. on the covenant 471
Special assumpsit will lie where a bargain is struck
and a promise made to pay - & says Judge there if
the principle should again come up before the 2d 7
court it is presumed that indebitatus assumpsit
would lie - and the plaintiff shall only have dama-
ges for the defendant's not accounting according
promise. It subsequent promise to pay up a
bond is of no use - no action can be brought upon
it because there is a higher remedy. But if a new
consideration is raised the case is altered - ass. 1ra. 1ar
will lie upon the promise. It holds a bond against 548
B - upon application to B to pay it up. B says 1ra. 1ar.
I don't know as I owe it. I thought I had paid it. Show 67
me the bond & I will pay it. - there is said to be a 1ra. 1ar.
new consideration - viz. the trouble of getting the bond 598
and assumpsit will lie upon this promise. But 11
says the Judge this case seems to be exactly parallel 617

assumpsit to that where the parties enter into a covenant
to account - and afterwards, promises to pay.
the balance. In joint contracts - the suit must
be brought against all - or the writ will abate
it will not be ground for an arrest of judgment or
a new trial - In a joint and several obligation
one of the obligors or all of them may be named
in the writ at the election of the plaintiff - but if more
than one of the obligors are made defendants
then must all be joined in the writ - not a part of
them - else the writ will abate. Where one only

1 H. 76 of the obligors in a joint & several bond is sued
Coup. 833 it is not necessary to state that there were others
2 H. 819 joined with him in the bond - but if they are

all merely mentioned - which may be brought only
against one - (which says the judge is the best way) no ad-
vantage can be taken of it by the defendant tho
it was once much doubted. But there be more ob-
ligees than one. they must all join in the action
even if the bond be joint & several. And if a bond is
given to each one there must be cancelled or evidence
the process of ~~discharging~~ as it is called - to show that judgment
is given upon them.

3 H. 106 it more voluntary covenant will not support an
assumpsit - that shall be deemed a voluntary cov-
enty which has been undertaken without a prospect

575
of certain recompence. Therefore if one lives in the contract
family of another with a mere expectation of re-
ward without any engagement or assurance
of such reward - no action can be maintained for ^{28th} 28
any reward for services rendered - however equitable
the claim may be. Case case in the second where it
would seem as if a person who had rendered ser-
vices in this manner would have recovered had
it not been for the proof of some expression of this
kind. If he had left me a legacy as he ought to have done I should
not have been the executor. Where a girl lived with her
grandfather - was treated very well - so that she co-
uld have no reason to leave him - tho she had a very
good offer to go out to work - no promise had been
made to give her a reward for services - unless such a
one as this - Sally you have been a good girl - we will take care of
you - you shall have a reward - She takes the offer but she
can have no more. If she had been requested to sue it
would have altered the case - here a ~~request~~ request would
lie on a quantum meruit. - ~~But~~ a request by the ^{10th} 10
defendant to do an act will be a foundation for an ¹⁰⁵ 105
action. But this request must not have been the ^{15th} 15
effect of some connivance - offer - advice or induce-
ment of the other party by setting some great
thing in view. - But where one does an act without ^{28th} 28
a request it is a voluntary courtesy - yet by the mor-

10 X
A *quasi* mercantile loan an action of indebitatus assumpsit
will lie - as if a porter who made it his business
to *quasi* carry goods - taking for granted that certain goods
181 were to be carried and that the owner would pay him
does actually carry them - the owner shall be liable
in this action. No recovery can be had for money
where the consideration was illegal as a wager
5th. 419 for boxing - but if the sale of goods is not illegal
in the vendor - but the vendee even with the privi-
lege of the vendor does with them some illegal act
6th. 341 *assumpsit* will lie for the value agreed upon -
as where A at Lunkirk sells goods to B & B with
the intent of smuggling them into England - B
shall be held liable to pay for them. Where whether
this would have been the case if they had both been English subjects
8th. 354 One case is found where 4 merchants were in com-
4th. 466 pany - 2 resided in England the other 2 in Ireland - goods
were bought in Ireland for the purpose of smuggling - the
court held that no recovery could be had by the ven-
dor because he was joining in the undertaking. See also
Stat. 55 a promise of indemnity in any illegal act is void.
A promise to do what one is in law & duty bound to
do, ^{without regard} will lay no foundation for an action for the re-
covery of the penalty for the breach of the promise
2d. 7th. as if a sheriff promise in consideration of money
to be received to take a particular person for bail.

As to right of recovery in this action *onus* of contracts
have gone upon as *bona fide* have in rescin-
ding the contract. A lends money to B to be laid out
in trade - interest to commence from the time the
money is demanded - and half the profits upon the
trade to go also to the lender - within two hours af-
ter the goods were purchased for trade the lender *comp.*
demanded his money. - Afterwards he brought
his action for the interest & half the profits but the
court said it was an unconscionable demand and
gave judgment for the defendant. It is also admitted
unconscionable the net wage for the *sole* retailers *comp.*
either were called to take so much an ounce for money 112-116
lent over above legal interest if kept beyond a certain
time. No promise to pay money upon a *private* 116-23
consideration will be sufficient grounds for an ac-
tion. - As to who may bring the action the general
rule is that he to whom the promise is made may
bring the action. It is said that he may bring the
action for whose benefit the promise was made.
This rule will not hold true to its full extent. It is
true that a relation of the promise for whose bene-
fit the promise is made - as if a child bring an action
on the promise made to his father. A *cestui que use* may
if he is a relation of him who holds the ~~property~~ ^{life} estate
bring an action on the promise made to the *tenor* tenant.

Example Judge here thinks that the general rules of law are broken in upon here - by affecting relations & being actions due to persons & another person - The rule is left indefinite & open for litigation - there is no case says he where a stranger - coming upon a case has been refused his right of action - and seeing the rule is carried as far as this it is believed that even this would now be allowed - at least it would seem so on the ground of principle.

A man on a sick bed died a son and a daughter when he wished to provide for. finding his personal estate was only sufficient to pay his debts - ordered the trees on his land to be cut down and carried off in order to increase his personal estate so that the daughter may be provided for. The son not liking to have the timber cut off - entered into a bond & covenant to pay his sister's wood provided he would let the timber stand. The man died and made his son executor - There was no one to sue the bond except the daughter - for the executor was made executor and it would have been the executor's business to sue the bond - However the action was brought in the name of the daughter and the court held that it would lie.

In Connecticut this rule has been carried one step farther. There a shoe maker had an apprentice - but being unwell himself and not able to teach him - he bound him out to another shoe maker - which last promised ^{the other} shoe maker to give the boy a yoke of oxen when he came of age - The boy came of age but his first master was

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dead and his executor cared nothing about suing contracts
But the law brought his action in his own name
and the court held that it would lie. I rec one ca-
me up before the United States court of a similar na-
ture. It was quite a speculation in the western
lands - owned a large estate there - he had one daughter
left only child - he conveyed his estate to one Ira Allen
in trust for his daughter and took a bond for the
fulfillment of the trust - he died and appointed this
Allen his executor. It seems that the bond had some
how or other got into the hands of the gentleman who
married the daughter. When there was occasion for
suing up the bond - there was nobody to sue - Ira Allen
was the executor of course it was his business to sue
but Ira Allen was the obligor - Ira Allen then must sue
Ira Allen - but as he would not naturally be disposed to do that
we say the judge as counsel for the Plaintiff brought an
action on the bond in the name of the daughter (or her
husband or both) before the Circuit court of the U.S. Judge
Chase on the bench - having previously secured the
land to respond to the judgment by an attachment
The business might have been done in Chancery by
a bill - but we feared that if we waited till we could
have a decree of Chancery - this Allen would convey away
the land or contrive some other way to cheat us out of it
which we were far from supposing he would do &

20th May. There was no way to secure the land as we did by an attachment - in case we went to Chancery.

The case when brought before Judge Leese struck him as if it would not go thro - & said that if the counsel had a mind to bring the action in another way - as clearly it might be brought up in Chancery - he would waive his decision - But we ~~concluded~~ that if we let go of our hold by this attachment which we must diffuse go to Chancery we should be liable to lose the land - and therefore the cause was continued to the next session when Judge Edisworth was on the bench - He held that the action well lay and gave judgement accordingly for the Plaintiff.

As to against whom this action may be brought - not only those who actually make the promise - but those whose agents or servants acting under them within the compass of their duty have by their own promises &c. &c. bind their principals & employers under obligation are subject to this action. A servant in order to bind himself in his personal capacity - must do it specially not in the character of servant. - Thus where the commissioners to lay out a turnpike road had employed a surveyor - and the surveyor - upon finding need of something - bought - saying at the same time that he was in the employ of the commissioners &c.

The court held that the commissioners were *lia-contract*
ble. The Governor of Quebec purchased stores for the
government as an agent & was held not to be liable. 15th. 182

The captain of one of the King's ships purchased
and bound himself on the account of the King 15th. 1824
for ship stores - He was also held not to be liable

If one gives a bond and signs it as attorney for
another it is good if he is actually an attorney for
him and acting within his sphere - but if he is *Hyd.*
not attorney & not empowered so to do the bond
shall stand against him personally and not be
against his client or principal - If one sends another abroad
into the country to buy horses and he buys oxen he
shall be liable in his personal capacity and his
principal shall be discharged. If a master once
sends his servant to take up goods & afterwards pays
for them - the master shall be liable for the goods
which the servant takes up afterwards for by
paying once he gave the servant credit.

Joint action & property partners. - A Partner to be
such must be interest in the profits of the trade. If
articles are entered into between individuals for joint
trade it is presumed that each one shares in the
profits and losses of the trade - but if individuals em- *Ans. 500*
ploy a common agent or a broker & he makes a
joint purchase this shall not make them partners

A pump. If the profits of any one are certain and not ascertained
 he is not a partner - as where one who had been in
 partnership but upon the partnership's being dissolved
 left in trade \$4000 at legal interest and an annuity
 of \$200 for seven years - he was held not to be
 26th. 998 liable as a partner - But where in a similar case
 999 the annuity was for seven years if the loanee lived so
 long - and expressly in lieu of the profits - with a right
 of inspecting the books - he was adjudged to be a partner.
 As to ~~action~~ brought by the partners - they must
 all be joined as plaintiffs or the defendant will take
 advantage of it at the trial and non-suit them.
 26th. 182 Defendant cannot stand in a statement - for he cannot
 tell when all the partners are joined - the contract
 are not the same - but in case of two defendants
 must stand in a statement. And it is a general rule
 1st. 810 that partners must all concur in bringing the action
 2nd. 182 yet there are some exceptions. A. B. & C. in business
 employ D. to sell timber for them - D. does the
 business - pays one third of the profits to A another
 third to B - but to C. pays nothing - Tho all
 of them join in the declaration - yet execution
 shall go out in favour of C. only - Or perhaps he may
 bring the action in his own name only in case the others will not
 consent. - Where there were 6 proprietors of a house and
 the lease paid all but one - their respective shares of the

rent- we could have an action in his own name *Contract*
 for his part of the rent. If one partner dies the
 right of profits and share of losses goes to his exec-
 utor- but the right of action goes to the survivors
 only- and none but the survivors can be sued. If
 A & B only are partners- and A dies- the right to 5 Bar 2611
 sue and liability to be sued survives to B- if B dies at 2612. 635
 & his executor only can sue & be sued - the execu- 947
 tor & B can have nothing to do with the action

This saves the judge who in name of a case Pennsylvania was
 upon an attorney arguing this point The judge told him there was
 no need of arguing - for the point was settled- What would you have
 to say the attorney if both were struck dead with lightning at once?

If the partners be not all joined in action against
 them they may take advantage of it in a plea in
 abatement -

A partial discharge of an agreement multi- 1066
 ally made will be a bar to an action on the prom. 1068
 i.e. if the discharge be before a breach of promise 216 44
 but if afterwards it will not cancel the agreement 256

There is such a thing as a discharge of a promise by
 a subsequent promise. - As if one who had promised
 to marry a lady in 8 months promised to marry her
 in 4 months. - No one can bring an action on an
 agreement until he has performed or has paid what
 he was to do before the other party would fulfill his promise.

Assumpsit If A promises to deliver to B a cow for the consideration of 3*l*. The cow must be delivered first but

Tender

It is 88 If A promises to deliver a cow to B in consideration that B promises to deliver to A 5*l*. B must execute his promise first, because it appears from the face of the contract that B made his ~~promise~~^{promise} first & it does not appear that A made his promise in consideration of anything.

T.C. & T.D.R. is the offering to discharge a debt or duty the parties and the thing promised being present. Generally where the debt or duty is certain the promisor can discharge it by tender. This is the case in most cases where a sum of money will lie. It is sometimes the case where the debt is not certain but such as may be made certain by the parties. as if one takes up a debt without inquiring the price - or if one hires another no wages being agreed on. If one agrees to employ a joiner to build a house - & sets the time at which the work is to begin. The joiner by tendering his services at the time agreed on discharges his duty. But if he does not build the house according to his agreement - he cannot tender the damages because the damages are not known to the parties but must depend upon calculation. If one engages to do a thing without any time specified when it is to be done - he cannot tender his ser-

services until notice is given or advertisement made. ⁵⁸⁰ Contracts

The maxim of the law is *de certum est quod certum reddere potest* - therefore the in declaration upon an action of account damages are stated to be so much as the promisor might have known the amount of the debt - and tender accordingly upon a quantum debt. If a man who owes another more debts than one - tenders money without specifying to which debt he would have it applied - tender cannot be pleaded to an action of assumpsit on either of these debts. - But if he owed but one debt only then in this case tender may be pleaded. Something more than mere words is necessary. - therefore if one comes to his creditor and says - I have got the money to pay the debt I owe you - I am ready to pay you. this will not answer - he must take the money out of his pocket and here Sir &c. It is no matter whether the money be in bag when tendered or not - & the tenderer is not obliged to count it out to him. - but if he tells the man here is the money, and keeps the bag under his arm all the while it is no tender. - It has been doubted by some whether it will be a tender if the tenderer says I will have nothing to do with the money, keep it yourself &c. It is said that the tenderer must make trial - whether to take it or not. But the sound principle says the reverse - it would be as good a tender as if

A promise to tender has shewn the tenderer to be leaving a
 tender in a house - which it is clear would not pre-
 vent a tender from being good. it is offer to transfer
 the stock according to agreement - and a subsequent ac-
 ceptance of that transfer on the books is held to be a good ten-
 der - If the tenderer declares upon what account
 he is tendering the tender is made the tenderer must
 be bound to apply it accordingly - If he does not
 tell to what debt he would have it applied it shall
 be optional with the creditors. If the tender be less
 than the debt no man is obliged to take it. If it is
 not accepted - it will be no tender - if it is accepted it
 will go towards discharging the debt. There is no
 foundation for doubt whether if more than the debt
 is tendered or offered it shall be a good tender. The
 maxim being *omni. magis contra minus*. If one has
 promised to deliver to another at a specified time
 a sum of money - or a quantity of goods at the election
 of the promisee - the tenderer must produce both
 copper coin & banknotes are not legal tender.
 A case once happened in New York where a merchant
 being offered with his creditor determined to take
 revenge by paying him in coppers - sent to Boston
 Philadelphia and other places to collect copper coin
 which upon being refused by his creditor and when
 brought - the court determined that copper coin was not legal

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Judge Keene then went on to tell a story of a debtor & creditor to himself
when his client had obtained his case - his clients adversary being a-
laid because he had been placed upon a level with his one & only poor man,
paid the bill of cost to Judge Keene - all in costs were added in this state
Judge Keene did not give himself the trouble to count them over - being
tired up in the case of so each - & like the man he was just on it - he was on
ing a journey in a stage and they would be with a driver to pay his
expenses - the man was undoubtedly wrong. - It is the duty of
the tenderer to keep the money if the creditor refuses
to take it - and to produce it in court on trial. But
suppose the circulating medium - and of that kind
which was tendered had depreciated after tender and Davis 18
remains. There would be no direct decision on this
point - the opinion of the court may be collected perhaps
from one case - that the loss shall fall upon the ten-
deree - and upon strict principle it would be right.
Tender of money is after refusal considered an offer
made to the creditor and is only binding to ordinary use.
whatever happens to this money then by operation of
law or the inevitable providence of God will excuse
the tenderer. If counterfeit money be tendered neither Col 208
of the parties knowing it to be so at the time it shall 504.115
discharge the tenderer - But if the tenderer accept of it
at that time or at any other time he may have his
remedy against the debtor unless he specially takes
the hazard upon himself. If one promise to deliver to

Against another certain article or goods - the tender must
 Tender be of such a merchandise as it will not rot.
 When upon property is taken off by tender and
 16th. 29 in real estate the land vests absolutely in the
 Mortgagee. If one promises to deliver cattle to
 another at a certain place & at a certain time
 and he does it accordingly - he has performed his
 promise - and it will be a good tender if he leaves
 17th. 79 them there - and so it will if he takes them back
 18th. 207 in order that they should not rot with him or
 be lost. tho he has no legal claim to them &
 the only difference between this and money is
 that where money is tendered the place must ^{be} ~~be~~
tempus - but where cattle or other person
 property are tendered at the time and place speci-
 fied a mere tempus is a good plea - & this prop-
 erty once tendered may be recovered in an action
 trover - as if a third person had taken them away.
 In case of a tender and refusal of money the tender-
 or is so far considered as trustee of the lender as
 if the original obligation be lost - the tenderer is li-
 able as a trustee. - In the body of 1783 there was
 an article inserted probably for the benefit of the re-
 fugees - that all the debts that existed before the war
 should be paid in the same manner as if no war had
 taken place. The government & agree must be paid

ought to pay the whole but in a legal and equi contract-
 able point of view the individuals ought not to
 pay the whole sum. Many of the States enacted
 laws directly on the face of this treaty that these
 debts should not be recovered. This had very near-
 ly created a serious rupture between us. Congress
 had no power over the separate States to com-
 pel a performance of the treaty. In this situ-
 ation they sent a recommendation to all the
 States which had enacted such laws advising them
 to repeal them - which most of them did. There
 was a question then started whether Connecticut
 had such a law. It was contended by ~~some~~ the part
 of this State that we had no such law. - We had
 a law of the kind. - Our supreme court was em-
 powered to take up all the bonds, notes &c existing
 at the end of the war & consider the individual
 equity as between each of the parties. They were
 not bound by any principles of legal equity but they
 were bound to do exact justice in every case. Under
 this the refugees came in with their bonds and
 what was their equity? It is a principle of law
 that if the party is out of the government it is the
 same as if a tender were actually made provided the
 other party was ready to tender. And in the case the
 refugees were within the British lines and there-

if funds were inaccessible. In such cases where there
 under was an attempt or readiness to let the court
 gave no more than it was worth at that time &
 no interest from that time. Suppose one man
 had received a sum of money (which if lenders
 he must receive) and had not ^{equally} paid off his own debts
 with it - he must suffer a great loss - but courts
 therefore made all that difference & the depre-
 ciation of money - But where there were no
 pre-judgments for a tender the court allowed the
 whole sum to be recovered. Many thousands of
 pounds were lodged with the Secretary of the State.
 The legislature contended that they had no law a-
 gainst the treaty and made it a mere matter
 of pride - But to get over the difficulty they pas-
 sed a general law repealing every thing in the
 Statute contrary to the treaty. This again threw
 it back on the court to decide whether they had any
 law contrary to the treaty. But it so happened
 that a case never afterwards occurred and of course
 no decision was given upon that point. Of Stock
 the 111 in the Banks a more offer to transfer this is suf-
 ficient. An actual transfer in the books is essen-
 tial with all the it is sometimes entered in the books
 in order to be more perfect. Mortgage discharges
 the lien upon the land when a tender discharges

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the mortgage. therefore when there was no original debt and the mortgage was entirely voluntary a tender of money on the mortgage would never discharge any lien upon the land and the voluntary mortgagee can never recover it if he refuses the tender either the land or the money. If a tenderer is afterwards called upon for the money and refuses to deliver it up the originator then revives and from that time he becomes a debtor instead of a bailor - but this demand must be made at a reasonable time and place - generally at home - but if he is away from home and has the money with him - he has no reason to complain if he is made a debtor afterwards. At times himself to build a house for B at a time which shall be appointed by B. - If A tenders his services at the time appointed and is refused admittance on the land - he may bring his action for the consideration agreed upon - the in Equity B may demand him a second time to build it. - If a day had been actually agreed upon between the parties for commencing the work - & it upon tendering his services at the time was driven off the land - no second demand can be made - yet A shall recover the money. If the tender is to made of money and no place fixed - the tender must in general be made to the person

of the promisee but suppose the promisee lives in
 London and the promisor or his agent in
 -London the case of payment - if the tenderer
 to the promisee and finds that the promisee has
 into the upper part of the court, he need not follow
 him - tender at the promisee's house will be suf-
 ficient - The tenderer must follow him if he
 moves - It is not necessary to go to his house if he
 be found there it. In England Tenants are not
 obliged to carry their rent money to their lord's
 house but it is otherwise in this country. The rule
 is different where the promisee wastes his heavy
 goods - here the tenderer is not obliged to follow the
 promisee when he removes farther from the place
 of tender after when the contract was made - but the
 tenderer must follow according to the direction
 of the promisee provided he do not direct them
 to be followed at a place more distant than was
 than was understood by the contract. If the case
 (or written contract) be assigned over - and the promisee
 has notice of it he must tender to the assignee or
 his agent - but if this assignee live farther off
 he need not follow him. In England no tender
 can be made after an action is brought at law
 Yet if the money be proceaded in court on trial the
 plaintiff goes on with the suit at his own peril.

But in Equity tender may be made as well after contract
 as before the plaintiff files his bill. In many of
 the States a statute is made by which the defend-
 ant is allowed to tender after suit is commenced
 at law. - Where the place of tender is fixed and the time
 for the payment be uncertain within any specified month week or the like - If you find him
 at home at any day in this month week so specified
 you may tender - But if you cannot find him at
 the place agreed upon for the payment and within
 the time specified then no tendery can be good till
 the last day in the month week or the like agreed on
 The latter part of the day counts consider the most
 proper time for payment. The court or jury must in
 general judge of this according to the circumstances of the case.

The money must be tendered so early in the after-
 noon that it can be counted by day light. - So if
 a certain number of yards of cloth are tendered it
 must be done so soon that it can be measured by
 day light. If the payment is to be made at an office
 as a bank or the like tender must be made at the
 last part of opening the office. If the place is certain
 but no time is fixed as if on demand the promisee
 must give notice to the promisor when the payment
 is to be made. If one binds himself to pay money to an-
 other in trust for a third person - he cannot tender

assumpsit To this third person but only to the promisee.

accordance In order to make a plea of tender good it must
state that it was made on the first day and it
2 Lev. 23 must appear to be on the most convenient part
3 Lev. 104 of the day. If you were at the place appointed and
1 Lev. 10 no body appeared to receive the tender you need not
2 Lev. 687 allege that a tender was made but only that you
2 Lev. 109 were ready to tender: but if he appeared you must
2 Lev. 312 state that he refused to accept. If the tender is of
2 Lev. 889 such a nature that all debt or duty is discharged
2 Lev. 207 you need only say that you tendered it. - as if a hog
2 Lev. 523 head of grain or the like were to be delivered. If all
2 Lev. 79 duty is not discharged you must state that also
1 Lev. 129 that you are still ready to perform and actually
2 Lev. 81 produce the money in court. If the duty arose at the
2 Lev. 254 formation of the contract you must allege that
2 Lev. 638 you are and always have been ready to fulfil it.

Tools or diamonds or other articles not bulky or bar
2 Lev. 1027 thereto. I should conceive now the judge may be
produced in court. & I have known a little ^{book} to
2 Lev. 527 be brought in. - but whatever is brought in as ten-
der must belong to the Plaintiff.

Accord is a satisfaction agreed upon between the
party injuring and the party injured which when
performed is a bar to the original cause of action
it is a defence which reaches all actions of tort

assumpsit and trespass. In England there was contract
exception to this rule viz. in parol at 660 P.D. can be 1 Bick. 154
made in bar of a specialty d.H. This is a kind of 9 Bick. 48
contract which must be written as strongly as it 6 Bick. 44
was tied. It is otherwise in Connecticut for here a 100
specialty may be void by plea of accord. - 1 Scitthie 260
is a plea of accord even good in bar of real actions.
An accord must always be made for a valuable
consideration - some pecuniary advantage or
disadvantage - an equitable consideration will 1 Bick. 128
not do. It has been decided (the same the judge I 1 Bick. 88
think incorrectly) that a rash is not sufficient con- 400
sideration. - Asking an others pardon is not suff. 6 Cr. 1. 193
sufficient. - It must be a full satisfaction. In Conn. 9 Bick. 70
what is sufficient in equity may be given in evi-
dence. The consideration must be certain not 2 Bick. 86
depending upon contingencies. The agreement 41 Mod. 8
must also be executed - (but mutual promises are binding) The 1 Bick. 132
plea must now be that the other party accepted the 11 Bick. 29-30
accord as such. the formerly it was otherwise 4 Cr. 578 -
I. v. F. & V. is a defence which may be set up a- 1 Cr. 450
gainst all contracts prima facie - but not against
torts if the infants are *deli capax*. Under the age
of 7 years no infant can commit a crime. Between
7 & 14 they may or may not according to the circum-
stances of the case. After 14 they may commit crimes

of infancy
Infancy
Duffell

as well as at any age. Infancy is no defence a gainst
slander - for malice is a necessary ingredient of
slander - & so is it a defence against trespass.
There are but two answers that can possibly be made
to a plea of infancy - viz that the things sold or used
were necessities - or that the defendant promised to
be bound to see to them - & necessities may be
pleaded specially or given in evidence under the gen-
eral issue - for the contracts of infants are not void
but only voidable - On an action at Ass. and plea of
non ass. to the com. law any thing may be given in
evidence showing why the plaintiff should not main-
tain his suit. If infancy is pleaded specially and
the plaintiff replies necessities - & the defendant denies
the facts - It is only necessary to state in general that
there were necessities - and on trial to prove the par-
ticular facts. Thus if a boy were to leave his father
and go out to board - & purchase clothes for himself
The ^{then} clothes are necessary if he may not have been ne-
cessary for him to purchase them because he may
have been under the protection and government of
his parents - If the action be brought on a bond &
infancy is pleaded - replication of necessities will not
be sufficient to maintain the action for the consid-
eration of a bond cannot be enlarged into the same
as the case with a negotiable note actually negotiated

In this latter case however a promise after a contract
will set up a negotiated note (is the original contract)
but a bond is void and cannot be set up by any
subsequent promise

A Plea may be given in evidence on the general
issue in ass. but not an action on a bond. But
in this case it must amount to a release in law or
he will fail - If it is only a discharge in equity he must be able to
file a bill in Equity for an injunction. In this plea there can
be no replication but only a blunt denial.

A Release of a consideration is a good defence
and must be pleaded specifically. The Plaintiff
must set out the contract in it or it is void or he will be
repulsed - for the court will not permit him to
have a different contract from what he declares
on.

A Release in one action is a bar to a second ~~action~~
in the same cause where the actions are concur- 827
ent as trespass & trover &c. where the same evidence
must be made use of in both actions

A Release is also a good defence. This must not
be confounded with a discharge - a discharge is where the
parties agree to give up or drop a bargain before the
action is complicated. But a release must be after a failure of
one party. There must always be a consideration in or
that a release is valid - or a sealed instrument of release

A sumptuous release under a demand of a particular
 La. 2. 578 or of a particular class of demands. A release of
 certain demands reaches executions &c. but not covenants
 in L. 100 and then broken. If an award be that A shall pay
 2 lib. 4 s. B shall in 6 months & that B shall give a release of all
 lib. 141 demands immediately - this 2nd is not needed. If the
 in J. 170 words covenants be used ^{as in the award} instead of demands in return
 covenants except in a case in L. 100 &c. - where
 it is said that in some cases the court will not
 consider all demands released by the award & award
 in L. 171 of arbitrators is a good plea to an
 action brought upon the original contract - The award
 is a substitute for the original debt and ac-
 tually merges it provided there be no fraud in the
 submission or corruption of the arbitrators. An
 award may be pleaded in all personal actions
 except where the award is made upon a specialty
 here the award cannot by the English law be
 pleaded in bar of the action but with us in law
 it is otherwise - If however the bond or covenant
 about which the award was made depends
 upon contingencies - a parole award even by the
 English law may be pleaded in bar of the action
 but in case the submission be by bond the award
 be parole & of course cannot be pleaded in bar of
 a specialty - yet the party which refuses to comply and

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with the award is liable on the submission bond. Contracts
as to matters concerning real estates if there was
a bond of submission - the award is binding tho the
arbitrators can give no title - If the party gives
title in pursuance of the award it is good. But
suppose the party refuses to give a title - what shall
the other party do? In Connecticut we go on along
very well - for the parties make out each of them
a deed to the other and deliver them up to the ar-
bitrators - and to that party who the arbitrators de-
termine shall have the title the deliver one of the
deeds accordingly and the other they destroy. But
in England they are bound down by a maxim by
which such deeds do not take effect. No title to real
estate can commence in futuro - it must pass in-
stantly or not at all. But if the deed is not given in
compliance ~~with~~ the award an action will lie for dam-
ages on the submission bond. It is generally in the pow-
er of the arbitrators to make ^{the} party give deeds to
the other - for they may award that one party shall
give deeds to the other or forfeit a sum of money which
should be more than equivalent - at his own option.

This is the case when the submission is by the mere
act of the parties without the intervention of a court.
But when the submission is made a rule of court
if the award is refused to be executed specifically by one

Uppmpt

award

partly the court of which the submission is made
a rule will issue an attachment for contempt
when an award is made without the intervention
of a court - and a subsequent writ to carry the award
into execution - upon a recovery of the plaintiff
if it be a mere matter of right - as if it were he
gated concerning the right to a stream of water - no
execution can go out - only for costs & suit - but in case of a
interuption of that award by the same party the court
will issue an attachment for contempt - There is
where the award is in damages or the like upon a recovery
in a court - execution will go out against the Defendant
Arbitrators have the power of a court of Chancery
in appealing to the conscience of either - they may
ask them such questions as they please. It is otherwise
however if by the submission they were to decide
according to the rules of law - here no appeal
can be made to the consciences of the parties. If the
dispute is about the claim to personal property &
arbitrators decide - as if it were concerning a horse
the successful party may bring an action of trover
for the horse. Arbitrators can do other things which
a court of law cannot - they can award a citation
not to be done - as where a supper of feasts was awarded
to be given to one party by the other - however the
court recommended the parties to settle between them

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A parole submission to arbitration is as good as a contract
other for the purposes of arbitration by the award. The
award creates a debt and the implied promise to
abide by the award lays a foundation for an action
of assumpsit - it is whether there be an express
promise to abide by the award or not there is no
difference only as to the form of the action, for in the
former case special assumpsit may be brought on
the ^{express} promise - in the latter - indebitatus assumpsit -
must be brought on the award. If the award was for
one party to deliver up to the other a horse or a hat
then an action of trover will lie for them - or ass^t
on the express or implied promise to abide. No ex-
ceptions can be taken to an award where it was
not in an immaterial point according to the ^{sub} ~~par~~-
mission - as where the award was by the submission
and the agreement of the parties to made out on
gold paper - and it was on common paper. - It was
formerly the practice for the parties on submitting a
controversy to enter into a covenant to abide the aw-
ard - But of late the parties enter into a bond com-
monly - with conditions to abide the award. This bond
does not swallow up the award but it does the ori-
ginal cause of action - so if this bond affect the award
be lost recovery can be had upon the award the same as
if there had been no bond - so if one article with another

Award
 To account with a stipulation to refer the account to
 arbitrators in case differences should arise - an award
 in consequence would not be swallowed up by
 the articles. - One method has most frequently been
 for each party to write and sign obligations to the
 other party - and deliver them to the arbitrators. If
 the arbitrators make no award to either party, then
 they are all destroyed - If an award is made in favor
 of one party the arbitrators deliver up to this party
 the note or notes given & signed by the other party
 if the note or notes are more than the award the ar-
 bitrators indorse - It used to be the practice not long
 ago in this state and it is the practice other states
 at present in order to put an end to litigation and
 make the award final - for the parties to execute notes
 to each other - go before a justice and accept judgment
 on them and deliver up the executions to the arbitra-
 tors - which were to be given to the successful party - but
 it was found out that there was a difficulty and a
 hardship here for the other party could never con-
 test the award - tho ever so much fraud or corruption
 had been practiced. This has been overruled and has
 gone out of use. A submission is always verifiable
 by the ^{on e} mutual act of the parties if done before the
 award is made up by the arbitrators. But if one
 of the parties revokes after the award is made up he

forfeits the submission bond and the award shall & contracts
 shall be the rule of damages - but if one party re-
 vokes before the award he forfeits his bond which
 shall be charged down to damages - but what
 shall be the rule of ^{damages} ~~damages~~? Our courts make
 the expense the parties have been at the rule of dam-
^{ages} ~~ages~~ - so that the other party shall be indemnified
 If the submission be parole a parole revocation will
 be sufficient - if in writing then the revocation must
 be valid must be in writing. - Formerly courts were
 much disposed to over set awards by every means pos-
 sible - afterwards they were more inclined to favour
 them the same technical niceties were frequently in-
 troduced - in modern times courts have inclined to
 be very liberal towards them - and give effect to
 them as much as they can. - so that statutes have
 been enacted to regulate the submission to arbitration
 in England and in most of the States. There are two
 kinds of awards 1st Where the submission is by the
 mere act of the parties 2^d Where the submission is made a
 rule of court. The award in both cases is of the same
 validity - only the process for enforcing them is diffe-
 rent. When the award is made without the interveni-
 tion of the court - the submission must be either verbal
 or written - it may also be with or without an express
 mutual promise to abide by the award. it is the law 12.34.248

1851 *Assump^t* once stood there were no means to enforce a verdict.
 Award not awarded & & done until the parties to the
 submission have bound themselves to abide by the
 award - but when money was awarded before, could the
 same law exist then as exist now - a recovery
 might be had for the money awarded whether
 the parties expressly bound themselves to abide by the
 award or not. Where there has been a bond to a
 1855 *bid* bid by the award, it was enforceable as it is at present
 & 1856 *1856* whether the award be a collateral act or money be
 1869 *paid* paid in case of non-compliance. As the law stands
 1876 *1876* now the parties are bound by the award by their
 implied promise to abide of no express promise. So that
 whatever be the nature of the award, so that it is
 immaterial whether there had been an express
 promise to abide or not. It is very common among
 merchants who are to have dealings together to sub-
 mit controversies to arbitrators before they arise as
 if in articles to trade together they express that
 all disputes to arbitrators - When this a
 question has arisen whether a suit at law before
 matters submitted to arbitration would be barred
 1885 *1885* by these articles of agreement. The rule established
 1890 *1890* in the navy is that in this case the Plaintiff should
 not file his bill until he has made an offer to submit
 and a refusal on the other part - or unless the arti-

65

arbitrators signify or die - or make a void award (10 Mod 15)
I have been told by some authority, and the judge
that by a very late decision in England - not yet repor-
ted, that articles of submission of this kind have
been held to be no bar to a recovery in a court of Jus-
tice notwithstanding the rule on equity - But
the Plaintiff at law will undoubtedly be liable for
a breach of covenant. - This decision seems
to be reasonable and founded upon just principles
No restriction of this kind can be effectually en-
joined upon third persons - as if one undertakes 10 Mod 59
in his will to make the parties thereto submit all
differences to arbitrators - this will not prevent
them from going to law - The extent of submis-
sion depends altogether upon the agreement of
the parties. The arbitrators must all exercise
an opinion - all be written in the award - a ma-
jority do not, as in courts of justice govern - But
where a reference is made to 3 or any less of them
and frequently the case - the concurrent opinion
of two will make an award valid. If one of the
will not join in hearing the parties the award
of the other two will be good. Note the revocation
of a submission as has been before said - it must 8 Mod 83
be done before the award is made out - If there are
two or more on one part - they must all join in a re- 8 Mod 82

• *Arbitration* - in the submission cannot be required.

Award a majority will not be sufficient. - of submission marriage of a woman who is a party to a submission is an implied revocation. Cases of the kind are very rare & on principle says the judge I do not see why the husband is not as much bound by the submission as he is bound to pay the debts of the wife contracted before marriage. This is a rule which was established long ago & has been upheld by numerous writers as well founded.

It is said by Hyde that in this case the submission would be forfeited - and there seems to be no reason why an action might not be brought upon it by the other party.

Who may submit to arbitration
 Generally all may submit who may make a valid contract. By the old law an infant who could not make a valid contract may submit when a trespass or the like had been committed against himself. This is not law now and an award in pursuance of such a submission is at least voidable if not void - because a submission cannot be reckoned a necessity. It was contested a long while in courts of justice whether in case a controversy arose between a minor and another person - the father or the friend of the minor could

by any act of his as by signing or being one of contract
the parties bind the minor to abide by the award
and or rather whether by binding the minor. Salk. 107
in this manner he became liable himself. It is settled
is now settled that he is bound himself to abide Com. 518.
by the award but the minor may do as he pleases
as about being interested in it - he is not oblig-
ed to perform. An executor is bound by an award 1 S. R. 691
to the extent of assets and no further. It is gen-
erally true that those only are bound by the award
who are parties to the submission. But if
one of the parties acts in the capacity of agent or
attorney with authority so to do his principal or Dyer 216
shall be bound by the award. If the submission Reg. 246
be made a rule of court the principal shall
be bound by the award without special authority delegated
to the agent. If one or more of a number of partners
submit without the consent of the others they shall
all be bound by the award but those of the partners Reg. 228
who did not submit nor give their consent to the
submission are not bound by the award as it res-
pects the other partners - (ie) in their settlement with
them they are not obliged to pay their proportion of
the award. Where there are many claimants as a
crew of a ship - a verbal consent to a submission
will bind them all if only one or more sign the subm. bond.

Award When it is said that the award must be final nothing more is meant than that this particular controversy shall be ended. So if the award be that one party give the other a bond - then there may be a dispute about the bond, yet the particular controversy is ended. The husband has power to submit to arbitration everything belonging to the wife which he has a right to dispose of. And it is said somewhere that it cannot be true that if she wins with him they can submit all her matters to arbitration. As the law once stood it is said that the affairs of the Intestate could not be submitted by the executor for in an action of debt on the ^{affairs of} ~~award~~ the intestate may have his wager of law but the executor cannot.

1 Ray. 248 The law is otherwise now. I find say the judge in 6 Ch. 43 the old authorities a jarrage of opinions from which it appears that land was sometimes said by some men to be a subject of arbitration - and at other times not to be. - It is now settled that land and other real estate is as much arbitrable as any other species of property. - As the civil law arbitrators had not power to determine whether one was a patrician or plebeian. - And by our law they cannot determine whether one be a legitimate or illegitimate person. A judgment even in a court of justice cannot always be a bar to arbitration. as if new evidence be dis-

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discovered. I see no reason says the judge why the Contract
in that matter may not be submitted to arbitra-
tion. But arbitrators can never withhold a judgment
of a court and say that the judgment was not given
upon reason.

Who may be arbitrators. — Generally all may be
arbitrators who are not dead & dumb — not of insane
memory — not from covert & secret attainder of treason
or felony. All but these may be arbitrators. No interest
or relationship shall exclude one from being
an arbitrator. — ~~quest if one shall become interested in the cause or some right~~
~~to the cause or judgment.~~ The statute forbids all relations near
or like Uncle & nephew from judging. But this does
not exclude arbitrators. The case was as to state
whether a certain decision belonged to the public officer
or to an Archbishop. — To end the matter the public
officer agreed to submit it to the Archbishop — and as Stat. 48
the Archbishop had power to decide in her own power an
action was tried & set aside the award but not sustained.

Of arbitrators in general. — It is very common for the
parties to a submission to appoint two arbitrators
and give them authority to appoint a third provided
they cannot agree. — The parties themselves often ap-
point this third person by their submission. who is to act
in case the other two cannot agree. This third person
is called an umpire. When the arbitrators are author-

Award
 Upon 5th authorize to appoint the umpire - they must ac-
 tually exercise a choice - for he cannot be chosen by
 lot - chance - or any kind of game. Suppose a time be
 set for the arbitrators to make out their award and
 if they cannot agree by this time then the umpire
 to decide - it has been doubted if the arbitrators don't
 agree and the umpire decides before the time has ex-
 pired whether the award will be good. This question is now
 no more - and it is settled that whether the umpire ar-

2 Mem. 100 to be appointed by the arbitrators or whether he was
 11. 10. 168 actually appointed by the parties - he may be called
 13. 10. 150 in to the first investigation of the question in dispute
 Suppose it were left to arbitrators to appoint an umpire
 provided they could not agree by a certain time it was
 a question which distracted the genius of Westminster-
 hall whether the umpire could be appointed before the
 day had arrived - it was also argued that he could not
 be appointed after the time had elapsed - if these were
 both true then certainly says the judge they would
 not appoint an umpire at all. These lawyers say
 he seemed to fear a little loss of time as much as the
 Philosophers fear a vacuum - As the law stands
 15. 1. 171 now the umpire may ^{be} appointed at any time with-
 16. 1. 145 in the time allowed to the arbitrators for a decision (or
 that of the umpire). If an umpire refuses to act they
 31. 1. 260 may appoint another and so on till the first arbitrator is satisfied.

But Belknap adhering so closely to the letter of the principle that when one instance exercised a power & delegated to him by another he cannot without new authority exercise it again - Belknap & I say would not decide that they could appoint another umpire. When a time is set by the submission for hearing the parties - the arbitrators must meet accordingly - and if they please may adjourn to another time provide it be within the limited time for the award to be made. But if no time is set by the parties in the submission the arbitrators may call the parties before them at a time and place of their own appointment. & if one party after due notice given neglects to appear either himself or by his agent or attorney - then obstinacy or without a reasonable excuse - then it is usual to adjourn but the arbitrators may go on with the hearing one party only and make the award accordingly. Suppose the arbitrators have heard the parties as to part of their controversy then leave the award to be made out by the umpire - can the umpire take their opinions as to the matter as far as they have gone & incorporate it with his own in the remaining part of the controversy. There is no modern case on the subject but it seems to be the modern practice for the umpire to take the opinions of the arbitrators as far as they agree - as where the arbitrators agreed upon all the

Award
 matters in controversy except the mode of calculation
 interest and left this to be determined by the umpire
 As the law has been & I see not says the judge why
 it was not founded on good principles - the umpire
 must hear the parties in the whole matter and decide
 accordingly without respect to the opinion of the arbi-
 trators. If a controversy be left to two men and provided
 they do not agree by a specified time then an umpire
 appointed in the submission or by the arbitrators to be
 1463 vice - the arbitrators disagreeing the matter is referred
 1464 to the umpire not before the time has elapsed. The ar-
 bitrators disagree and the umpire joins with them the
 award will be good. The parties may be bound and re-
 award made ^{or anything} before the time limited in the submission
 after they have heard the parties they are not obliged
 to tell when and where they shall meet to make up the
 award but they must deliver the award on or before the
 1465 day appointed in the submission - If the award is for
 1466 one party to do or pay something before the day appointed
 in the submission - no action will lie against him
 for default until he has had due notice - but if there
 is to be done or the money paid after the day appointed
 no notice need be given formally for the party can act
 or after that day know what the award is by enquiry
 1467 of this clause viz (in order to the parties in and acting) be inserted
 1468 in the submission & if one or both of the parties will not

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appear the award if delivered will be binding. If noth^{ing} Contracti^{ng}
ing is said in the submission as to the award being
in writing - or orally pronounced - the award in ei-
ther way will be good - the word deliver may mean ei- Dyer 218
ther in writing or by parole - as when we say a man
delivers himself with grace or the contrary - meaning that he
speaks with grace &c. -- If there be two or more on a gloh. & c.
party when notice is necessary to be given to one it must be
given to all. If this clause be inserted viz provided
the award be ready to be delivered on such a day - Lord Holt held that
said in this case that were it not for the former Decis-
ion he should be of opinion that the award here must
have been in writing - but he and the rest of the court
said it was sufficient if the award was parole. Suppose
there be several points of controversy as debt Slander
breach &c submitted at the same time - The award as
to one point cannot be delivered by itself at a different
time from the rest - but the award must be delivered
all at one time - except where the nature of the case
will not admit of it.

As to the Restriction to which arbitrators are subject - Generally
they cannot make an award upon any condition (as to make
if any be left to be determined by another person or a
court - as if the award be such provided the court of Chancery
shall decide a certain point what it be such - in such
a case the award will not be good. They cannot after

it appears the award is made up reserve any thing to be done
 Award or any subject to be considered afterwards. They can
 however reserve a more ministerial act to be done

Hard. 43 either by themselves or such as they shall appoint -
 if the award be that one party shall deliver to the other
 100£ worth of goods as cattle or the like to be seized
 by one or two of their own appointing. Or if a certain
 number of acres of land be left to be measured off by
 a surveyor. As the law used to stand the arbitrators
 might award a sum of money as 100£ to be
 paid at a certain time - but if not paid by that time
 then to be increased - as to 105 or 110£ - this used to be
 the law unquestionably - but says the judge I very much
 doubt whether this which is a kind of penalty would be
 considered as law now. Arbitrators cannot delegate
 their power to another any farther than is expressly
 agreed upon by the parties in the submission. They may
 apply to a lawyer or the like person to draw a deed or
 the like which is a more ministerial act. than an

14th 71 award directing one of the parties to make a confes-
 sion to the other at such a time and place as should
 by him be required is not binding. If arbitrators

21th 501 award a release of a bond or the like such as shall be ap-
 proved by the court - it has been decided to be a good award

21th 517 Where in a submission under a rule of court the ar-

bitrators awarded money to be paid and left the costs to

be taxed by account the award was held to be good. The contracts
cost must be taxed according the rule of law in this case. 1. D. 558.
It must always be left to be taxed to those whose duty Com. 558
it is to tax costs and not to a stranger. The arbitrators - H. 121
themselves have a right to tax the costs and L. 1025
make out the award accordingly - They may make
the award on some day they are appointed. -

As to the Validity of a good award. - It must not exceed
what is prescribed in the submission. The submission is
to be the rule of the award. By the old authorities when
the award was about something not in the submis-
sion - the award was wholly void - afterwards it was
held that the award was void only as to what exceed-
ed the subject in the submission. Neither of these is
now the precise rule - but an award may be good as
to part and void as to the other part - or it may be to-
tally void according to the circumstances of the case. -
generally if that part of the award which does not ex-
ceed the limits of the submission can be ascertained the
award so far is good and the rest void - As if it were 2. H. 300
submitted to appreciate the value of a horse which A
sold to B - and the arbitrators estimating the value of
the horse at 30£ and saying given which B sold it
at 20£ awarded that B should pay A 10£ - This award
would be void as to what was submitted viz 30£ in the horse
but if the arbitrators had not estimated by their award

Assump^{io} the value of the horse but only said that the difference
Award between the horse and oxen ~~was~~ 10^l and awarded
that B should pay it here the award would be void
in toto. So if it claims the right of B horse & B claim
it oxen - and only the right of A to the horse is sub-
mitted - if the arbitrators award that A shall have
the horse and pay B 10^l - the award is void in toto
When it is expressly stated by the parties that all personal
actions are submitted - no causes of action are included
but when the words - all complaints - all demands or all causes of
action are used in a submission it includes every point in
controversy. When a question of right is submitted
as where two owned a house together and the question
how much each one owned was submitted it was
by the old authorities whether arbitrators could a-
ward that one should give up his right and the
other pay a sum of money - but no doubt but that
arbitrators have power to do this of late - as where
the right to a mill-stream is in dispute it may be
determined - & also what one of the parties shall receive
for giving up his right. & further with it extend their
power or their right to award any collateral in satis-
faction for an injury - or a debt - for which damages may
be at law. as where one was to receive a dinner of 10^l of
another - or where one was to make an acknowledgment
to the Mayor & aldermen. I think says the judge this is

clearly the law now. It has been doubted whether the contract
under all cases of actions - or all cases of complaints are within
these matters of difference between one party and the
others wife - but it is now settled that it includes all
controversies respecting personal injuries to the wife of ^{the} plaintiff
one party - and to all the property which the husband had
had a right to dispose of. - It cannot therefore extend
to her real estate. Arbitrators may award things to be
done which are not in the submission - as a covenant
to secure the execution of the award - or order a writ to
be drawn and given to one party - or order a release to
be given by one party. It has been held that it seems to me 13 Bro. 4, 5
and the judge erroneously that under the words all
demands disputes &c. dissolving a partnership was in-
cluded. A distinction has been made between a sub. 2 Bro. 1118
within where it is agreed to refer all matters in difference 2 L. R. 664
between the parties in the cause and where it is agreed to refer 14 & 146
all matters in difference in the cause between the parties - for in the 2^d 2 Bro. 1118
former case the arbitrators have a larger field of inquiry.
Arbitrators may order a claim - or a writ to be given
up which arose after the submission - and it now ma-
kes no difference whether the claim or writ arose before
or after the submission. Costs which arose after the
submission may be awarded as well as before 1 L. R. 611
before. A release of debt up to the time of the pay-
ment of the award - will be a good award but an actual

1st. 1st. release up to the time of the submission has been
 Awarded ~~not~~ to be a sufficient execution. The award is to be
 good must ~~be~~ ^{be} ~~be~~ ^{be} laying a duty on anyone who
 is a stranger to the submission. This however is to be un-
 derstood in a limited sense - The award in this case
 36th. 77 may be good if beneficial to one party and operates
 11th. 1st as a disadvantage to the other - as if A & B be parties
 1st. 1st. to the submission - and it is awarded that it pay so
 much to B's wife - the award is good - A can never
 object to it. So the award may be for one party to con-
 tribute so much for the support of their common
 mother. It is good. It is always presumed that
 1st. 1st. the award is beneficial to one party unless the contrary
 be proved. If the award is for a stranger to do
 an act it is void - but if the award is for one party
 to do or pay something to a stranger it is good. Thus
 if A & B are the parties and the award is that T. S.
 shall sign a bond with C - & be given up to it - the a-
 ward is void, yet it is not so if it is willing to take the
 bond - in C's name alone - or if T. S. does actually sign
 the bond - in either of these cases it is good. So also
 if the award be for the wife of one party to give with
 her husband in a conveyance - it is void unless she
 does actually join in the conveyance - or the other party
 to accept the conveyance without her. Hence the words
 in the submission were all contradictory then (or not) and there

419

were there on one party and one on the other the Venetian
court held that the arbitrators did right in taking
into consideration the contravention between all the
individuals. The law as it stands at present is there-
fore if this and an award so made would now
be considered void. If A has a debt against A & B
jointly & severally and the controversy is between A &
B which ought in justice to pay the debt - an award
where A & B are parties to the submission to discharge
one of the parties from paying the debt - can destroy
or hold upon either of the parties severally at law or
election - or upon both of them jointly. Where the
words of the submission were all matters in dispute both
real and personal - and by the award no real estate was
taken into consideration - by the old law the award
was held to be void - but now the law is otherwise. There
might not have been any real estate thought of by the
parties but the words now are considered a mere surplus-
age - as many written instruments are where the
attorney or writer is paid by the line. It would it is
true seem the more seem hard if the matter in dispute
was about an estate - and the attorney to raise his fees
has introduced every species of property as realties
and personal - and even the judge is in not much
to the honor of the profession. Such surcharges are
found in all the books and are still practised.

award - Where all matters, bonds, &c were submitted and
in the award it was expressly stated that the award
was made, ^{about} all but one bond - here the award was held not
bind 400 & so on because the bonds were not all considered - but
upon the judge they were all considered - there is only
a mistake of the award. - they did in fact receive the
the bond. - and this award would now be held to be, &c.

Oct. 8/18 But if the arbitrators actually resisted any part
of what was submitted then the record would be void.

600,000 standard is always presumed to be good unless the con-
355-1502, 4/10/17 be shown. Suppose the submission be specific

each cause of complaint, as respects the time, & it so
be expressly stated - and also the course if the matter be

81th 98. made of these promises (called the clause of ita quod) the answer must be that it be made of the promises submitted on it will be void & 82nd but if the clause of ita quod be inserted in general it will make no difference - If the clause of ita quod be left out - according to a case found in old books the

Oct. 28. ^{ed} avoid will be good if all the notices are drafted in
uniform one - there is however one case directly the reverse

316 of this - but the authority is not sufficient to be a
guide one - tho says the Judge it seems to me the rule
is correct as laid down in the latter case. and would
certainly to have is a ^{very} good. An answer may be made

4/24/10 From injury which the foot would take in walking
4/26/12 as the thread will in the reverse - the reverse is this

21.
can be had against a liar as such - nor against one who tells
who charges another with lying. yet if an award
is made that one party shall make a compensation
for the injury - it will be enforced. - In the time of the
law there were a law enacted by which a liar was
liable & fined by dollar for spreading a false report
and in common times - says the judge liars are free
from punishment. I was once called upon says he to draw a
will for a mile distant. A man who having always maintained a good
character had been charged with lying by one of his neighbors and he
said he had done so for some time and he ~~was~~ had determined to leave the
place. The judge told him that he could not recover - he hesitated - shook his
head and said he now always has a respect for the law - but if I cannot leave
the place he said he will tell you what I will do. I have got a farm that
has got good history growing on it - & I will use it. - An award
must not be impossible as if it be for one party to
give a bond to the other signed by three persons - or
for one of the parties to pay 50^l when he was not worth
10^l - or for him had the legal estate of a cestui que use
to convey the estate to another. These tho. not physi-
cally impossible are in the eye of the law considered
impossible. An award must not be unreasonable - If
an award be made to pay a debt by personal service
it is void. - As the law used to stand - & as it stood long
after I began to practice says the judge men might be
bound out to service to discharge a debt - but it is otherwise now

122
 Assumps^t Criminals only are subject to be bound out for
 service. It has been held to be unreasonable where the
 award was for one party to pay the other in the house
 of a third person - or at the house - because said the award
 it may be trespass for him to enter into the house or
 even to enter his door-yard for he cannot pay at the house
 unless he can go into the door-yard perhaps. These says
 the Judge are viceties peculiar to the ancient law.
 6 Car. 26 the modern practice is of a more liberal prin-
 3 Lev. 153 ciple. He does not but that an award of this kind would
 at present be good - and the execution would be good if
 the money should be paid or tendered anywhere near
 the house. An award for one party to make satisfaction to
 the other was held to be void on account of immorality
 and not because it was a collateral act. Arbitrators have
 2 Mod. 304 no authority to bestow the payment of a debt (or bond)
 when the quantum only is submitted to their con-
 sideration. It has been held to be unreasonable where
 one party was to give Italy in satisfaction of a debt
 so it would be if the award should be that one go to
 Genoa for the other. - And if one of the parties is poor
 and the arbitrators award that his house shall be given
 up in satisfaction of a debt. - The award must also
 be advantageous - must not be injurious. - if the award be
 that one party go to home not upon business for the other
 but as a kind of penalty - it is void - this says the Judge -

is not properly referred to this head. — So an award contracts
for one party to wash his hands or comb his hair is
void because it cannot in general be any advantage
to him or the other party. If matters are submitted
to arbitrators and one party be ordered to give his ti-
tle to certain land to the other — about which land
there had never been any dispute or claim by the
other party — the award is void because it is negatory
But the most singular of all awards upon record is
one where one party was a man & the other a woman &
the award was that they should marry each other &
it is no less singular that it should be recited among
awards that were void for not being advantageous ra-
ther than among unreasonable awards. — it is awarded
that one party deliver up to the other certain deeds
he was held to be good. — the same the judge I remember
a case where an award to deliver up certain goods taken
from the other party was held not to be good but says he
I am far from believing the latter decision correct — the
old idea was that something must appear to be given
in recompense — and the giving up deeds or the like without
a release on the other part would not be a good award — On
the same principle where each party owed the other a H. 1289
debt — an award to go quit of each other was held to be void —
Now there can be no question but that such an award would
be held to be good. — an award for one party to pay so much

Assumpsit or go before the Mayor and swear that he did not
 owe the debt - was held to be void - on the ground that
 it tended to encourage perjury - and at that time that
 an award could not be an alternative - because it left
 it doubtful which was meant. - The award must
 be certain - the old rule was that it must be certain
 upon the face of it - If by any construction they
 could make it dubious - it was held to be void. An award
 for one party to pay the other as much as in good con-
 science he ought to - is void for uncertainty. An award
 to pay so much & also the expenses of a certain lawsuit
 was held to be void - tho' it is thought now that an a-
 ward of this kind would be good - the expenses of a
 lawsuit may be ascertained - and a verdict may be
 made accordingly. So an award of payment in days-
 works for task-work &c is void. An award that it
 should not molest to and that it shall enter into
 a penal bond with to not to molest him is void for
 the penalty of the bond to be given is not specified by
 the award - it will not do to estimate the worth of the
 land - and so double this for the penalty. An award
 that that the two parties shall pay equal shares
 of a debt which it once to to satisfy the old law - void
 but now otherwise. An award that one shall pay
 the other as much as a quarter of malt sold for is
 void for uncertainty - because the price may be different.

in different places - the market prices may be various & contracts
 can award to pay so much money - three boxes & Lute. 550
 several books - cannot be reduced & a certainty and Lute. 124
 is therefore void. It seems to have been the old law
 that where an award can possibly receive another
 construction it was void - Lord Holt adhered closely
 to many ^{such} niceties - when in the following case he dis-
 sented from the rest of the court - It was here said - 2 Nov. 1676
 judged that an award was good where - after saying Lute. 244
 that one party had a right to use his lumberyard - the
 arbitrators directed certain shingles boards &c to be
 removed - which were a nuisance to the other party
 an alternative may be awarded - as if the award directed Lute. 245
 one party to give certain goods or pay 50 £ - but the law
 was the reverse of this. An award has been objected to
 on the ground that no time or place was appointed
 for the execution of it - where money is to be paid a
 reasonable time is allowed for the payment - as in Str. 903
 to place it is immaterial in most cases. So that an
 award of the kind would now be held good. It was
 once held void if an immaterial mistake in the dis-
 cription appeared in the award - as where in the sub - Lute. 246
 mission the land was described to be between Charles down
 and Croft down - but in the award it was said to be between
 Defendants down & S. J. down - no such trifling variation
 would now be noticed by courts. This rule is now at an end.

1841 m. 5. A matter of assault & battery was submitted and the
 award arbitrator awarded that he who had committed the act should
 1841 m. 246 pay the other 10£ without expressing in what the 10£ was
 1841 m. 48 to be paid - an award of this kind would now be void the
 once it was held to be void - a case once occurred here where
 an award of this kind was held to be void - one of the
 judges dissenting. - The award must be final (as)
 final as to the original cause of action - all questions
 then or then coming must be moved by the award
 therefore if the award be that the Plaintiff be non-suited
 it is void - but if the arbitrator order a withdrawal
 admitted it is good - for in England and our colonies an award
 removed but in this situation in this matter upon which the award
 is void. An award that a party shall do is not good. An
 award that each party shall bear his own expenses in
 1841 m. 47 a suit is - - - whereas one must make the first breach of
 law or the arbitrator award that one party shall pay the
 1841 m. 68 other - Settlements &c - - An award may be made pro-
 1841 m. 110 vide at a future time. If the award depends upon
 1841 m. 50 contingencies it is void. The old idea of mutuality
 is done away - something they said must be done
 on both parties - as if one party was to pay the other must
 give a release and all this must be expressed in the award.
 1841 m. 28 As the law stands now there is no need of any act to
 be done by the other party to create a mutuality.
 As to the old & new law of an award, the old

rule was that the intention of the arbitrators was to be
not to be regarded at all - but it was places to be taken
as it was on the face of it. a devise they said must
be construed according to the intention. The testator
a deed must have certain terms in it which the
law approved - and an award must not only have
certain terms - but it must be absolutely free from
any ambiguous expressions - so that the construction
cannot possibly be given. The law at present gives
wards a liberal construction - regards the intention
of the arbitrators as much as that of a testator.
If arbitrators award that one party pay to the other
£100 in satisfaction of all controversies it is now construed
to mean all controversies in the commission and no
more. So if it be ordered to do in goods to do & pay
£100 - it means that it shall be paid for the goods & the
£100. So if it be ordered to pay to A and B each an equal share the award is
circumstances of the case would it admit of evidence would
give validity to the award without ordering to give in
the award. So if it be ordered to accept of B in satisfaction
of controversies submitted a bill of sale of 1/2 part of a vessel
without ordering to give a bill of sale. it would
that it pay to B 500 in full of all demands would be valid
unsummed demands up to the submission and therefore be valid
but it would be void according to the old law because this
was not expressed in the award. An award that the arbitrators

25
Award should give notice to their Opposer when they should
their sheep was held to be void - on the ground that
the Opposer might be put off at the time. - Formerly
an award of release was void if not expressly stated
to be up to the submission - afterwards this construc-
tion was put upon awards without this expression,
but then arose another difficulty for if the award was
for the release of all demands up to the time of the
award it was held to be void - for there may have been
a controversy after the submission not contemplated
by the parties in the submission. But as the law is now
a release up to the time of the submission will be a good
execution - then the award was that releases be given
up to the time of said award.

As to now for an award is good in part & bad in part - the old rule was
to be that if an award was any part of it void it was void
in toto afterwards there seems to have been a vibration
to the other extreme and all awards that were good in
part & bad in part - were held to be good & binding all ex-
cept what was void. The modern rule stands between
the two extremes and makes those awards valid ^{as to} ~~the~~
the part which is good - where one party only is paying money
or so an act and the causes of controversy are reasonably
considered in the award. Case if the party to whose dis-
advantage the void part of award operates is willing to
perform his part the other party is not competent

to refuse compliance with the award. Thus if it be Contracted
 ordered to cease prosecuting all suits pending - then
 the award is void by the old law and void by the necessity
 to take suits commenced after the submission yet if
 it accepts and performs his part B is not competent to
 say he will not perform his part. So if J. S. be ordered
 to give a bond with surety to J. S. - It is void as to the bond E. 452
 surety - but J. S. must go and offer to J. S. a bond in his own name
 and if he accepts such a bond for he may or may
 not at his own election. - but if J. S. offers a bond with
 surety according to the award then J. S. is bound to abide
 the award and accept the bond. So if a & his wife are
 ordered to join in a conveyance of Blackacre to B - & they
 be actually thus offer to convey B must accept for he is
 not competent to say the award was void - or if B agrees
 to accept a conveyance by A alone without his wife it is not
 competent to say the award is void - or if the title was 2 Lev. 1
 wholly in A - B must accept the conveyance made by A
 alone. Where the award was for each party to pay money
 or do some act and the void part of the award was to be per-
 formed by one party - if the party who was to do the void part
 does it - the other party cannot object to the award on the
 ground of its being void on the other part. Thus by the Stat. 57
 old law if it be awarded to pay to B the cost of suit & B to pay 1000. 20s
 or 10£ it is void - but if A actually pays the cost - B must
 pay the 10£ - The same is the case if it be awarded to join

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Award with his wife in a conveyance of land. So if it be awarded
Awardment to pay B for his work and B to pay A 25^l - & it does his
part to must do his. But where the causes of contro-
versy actually in the submission - and others not in
the submission are by the award considered in an ex-
Cros. 4. 689 gregate manner - as if the controversy submitted was
about a horse only - and the arbitrators considered as
yoke of oxen - and awarded generally that one party
pay the other 60^l - the award would be void in toto.

10 Esh. 38 When it is awarded to do this thing and that thing &
12 Ed. 587 to other some being within the submission and some
without & B is awarded to pay in consideration there-
of 100^l - The award is void in toto. If it be awarded to
Cros. 552 pay B 40^l in satisfaction of all demands except the submit-
1 Reg. 114 tion - and B to give releases up to the time of the award
the latter is void according to the old idea &c. &c. - -

An award must always be made in manner and
form as is directed by the submission. This is the
guide - the Pleas-lam - to direct the arbitrators. - When
nothing is said in the submission directing the award
to be made "writing" - it is immaterial for it shall be
valid whether in writing or by parole. - Some little tri-
2 And. 246 vial thing provided for in the submission may be dispensed
Barnes 6 with - as if to be written on gilt paper - or on paper indented
Falm. 121 according to the old method of indenture - but every thing
which will add strength to the submission must be complied with.

What shall be considered a due performance guaranteed contract
If one be ordered to deliver up the last will and testament
of a testator to another - tho it has been recorded in the
probate office - & he cannot get it from thence - but
if he has the original will - he by delivering this has called 34
discharged his duty. - So in this country if deeds be or-
dered to be delivered up - If he delivers the original deeds
which he has in his possession - it will be a sufficient
execution - tho they are recorded in the town records.

If the party in whose favour the award is point out
a different mode of performing the award. It is a
sufficient execution if this mode of performance is ad-
hered to by the other party. If one be awarded to pay
money 6 months after the award - tender of the money
at any time before a suit is commenced - with interest
after the six months are up - ~~It~~ will be a sufficient per- Hj 184
formance if the submission bond is not forfeited - or
if there be no submission bond. Another case shows
how much minds may be entangled with mere forms Year 35
- it was awarded that all suits cease - this award was
made in the middle of a term while a suit was pen-
ding - this case had not yet come up before the court for
trial - the plaintiff went on with the suit and ob-
tained judgment within a few days after the award was
made - every judgment relates back to the first day
of the session of the court by fiction of law - The defendant

Assump^t brought an action for the breach of the submission.
Defenses. Bond - to which the defendant in this action made a
stipulation. Special demurrer stating that by the verdict of the
court judgment was given before the award was made
& the demurrer was held to be sufficient. not law now
One party is awarded to give the other a bond payable
4.903 a year hence - if this bond is given a subsequent de-
1892 fault of payment will not be a forfeiture of the sub-
mission bond - but only of the bond given under the award.
So an award that it shall lease to B - B, paying a sum
a year - if it covenants to lease accordingly - the sub-
mission bond ^{and the award} are merged in the covenant - and whatever
breach there may be of the covenant - no action will lie
upon the submission bond or the award - but only on the covenant.
Of the remedy to compel performance of an award and the method of
bringing the action. Ist If the submission is merely verbal
without an express promise to abide the award - The ac-
tion may be brought in two ways - 1st Indeb. ass. on the
implied promise to abide the award - 2nd The same ac-
tion upon the award itself. - but if the award was not
performed - this action will not lie upon the award but
must be brought on the implied promise to abide. II If the
parties had expressly bound themselves to abide the award
if verbal and the award be a collateral act - the action
may be either special or indeb. ass. but it must be on
the express or implied promise to abide & not on the award itself.

if it be not a collateral act to be done - the action may be as before or in discharge on the award itself. III If the submission be in writing without a promise to abide the award - the actions are the same as if verbal. IV If the submission was by deed with conditions relative - an action will lie upon the deed as a bond. It lies only when the conditions are broken - & indebit. ass. will not lie except upon the award. - When the action is brought upon the deed &c as last mentioned, the Plaintiff must bring his action upon the general part of it the same as if it were a debt - stating it to be in writing obligatory &c - without stating any conditions or for what the bond was given - the Defendant then ~~pleads~~ ^{pleads} ~~the~~ defence praying over of the conditions &c as heretofore stated. If the submission were merely in writing without any penalty - the action must be as heretofore said either specific or indebit. ass. - ~~but~~ and the declaration may be put in the manner to be in the 903 writing - or may well be put in it being in writing - the modern practice & generally is to state the writing. - If the defendant pleads over of the bond only, he must in his plea recite the conditions &c as they were - If he pleads over of the bond & conditions also - he may plead no such award (or no award) - The Plaintiff must ^{not} join issue here saying there was an award but must not only state there was an award but ~~also~~ recite the con-

2. *Summ.* conditions - containing the articles of submission
 Award precisely as they were in fact - stating that the ar-
 bitrators undertake the burden or charge of the award
 180 at the time, place & mention in the submission
 for if any of these be omitted the Defendant will demand
 sometimes the Plaintiff must aver performance on
 his part - as where the conditions on the part of the
 Plaintiff were precedent and no duty on the other
 2. *Mod. 39* part was created till his performance. So if part of
 2. *Mod. 77* the award is void and that on the Plaintiff's part
 2. *Mod. 390* even if the conditions are precedent on the other part
 1. *How. 48* he must aver his performance. If the award was
 242 that I join with his wife in a conveyance & 13 for the
 2. *East. 158* consideration of 100£ - here he must aver his perform-
 2. *Mod. 330* ance - show that he has done what he was not obliged to
 1. *How. 44-25* do. If the award differs in any the least manner
 from the terms of the submission - it is not the business
 2. *Lut. 536* of the Plaintiff to point it out - he must aver that
 2. *Mod. 217* the award was made according to the requisites of the
 submission in every particular - as in presence of the
 witnesses, on the 1st of Jan. and the like - or that a bond
 217 was given under seal & seal &c. and if there is any de-
 1. *How. 281* feet let the Defendant show it. It is essential that the
 1. *Mod. 31* Plaintiff in his replication assign a breach of the
 2. *Mod. 24-78* conditions - otherwise the replication will be good
 153 for nothing - unless the Defendant in his plea admit a breach.

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It has been said that where the award was to pay, contracts
on or before such a day, - an agreement that ^{the debt} ~~the debt~~
not pay on the day would be ill - but if it were aver-
ed that it was not paid on the day it would be good. 2 Vent 221
this says the judge is a very nice distinction and one 4 Ser. 293
which has great deal of sense in it. - The best &
the surest way is to make the agreement according to
the terms of the obligation. - An agreement that he
did not pay according to the terms of the award has
been held to be good. - Suppose it was awarded that the
plaintiff pay money on such a day at such a place
and the performance or duty of the plaintiff was pre-
cedent it must be shown in the pleadings that he was
there and ready to pay - or if he had tendered and it
was refused - it must be shown that he refused and
also that whether the award is to pay money - goods 4 Ser. 43
or to some collateral it must be stated that he has
tendered - but has always been ready to ^{pay} ~~tender~~ &c. - When
land is awarded to be conveyed - a deed made out and re-
corded with notice to the other party will be sufficient
tender. - If the award be that one is to pay to the other
when requested by the other it is not like a note or
hand payable on demand which may be sued at any time
without notice - but a request must be made.
or notice given ^{the debt arises} before ^{it} can be brought - and
this must be stated in the pleadings. - Where an

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If the alternative is awarded the award must be
made that the defendant would do neither.

Where there are several distinct matters of con-
troversy in the submission - and the award is
made with several distinct clauses accordingly
it is said by elementary writers that the breach
of only one must be assigned. - But this is not true
24thly you may assign one or more breaches as you
please - & the better way is to aver several when you
can - let you fail in the proof of one. In covenants
it is allowed on all hands that several breaches in
17th 25 a covenant can be assigned - and there can be no
18th 300 doubt but that the same is the case with a bond.

Where the defendant admits a breach the plaintiff
need not aver one. - Every replication should sup-
port the declaration and every rejoinder should sup-
port the replication. - Every plea must allege mat-
ter pursuant to those before it.

As to the ~~plea~~ of the defendant, there are only viz
1. No award & 2. No breach of the award. Under the
former are reckoned all illegal awards - Under the
latter tender or actual performance. I have pra-
ctised away which was the judge I do not know as is
recounted by the books - but which is agreed on enough
viz Where the parties submit all controversies gen-
erally - with a proviso - which is almost as that the

03

award be made of the premises. The Defendant when contract-
ued upon the bond praysayer of the conditions - pleads
no award of the premises. The Plaintiff in his replica-
tion sets out the award and avers that there were all
the controversies of which the arbitrators had notice.
The Defendant rejoins that the arbitrators had no-
tice of other controversies & joins issue upon this whether
the arbitrators had notice or not of other controver-
sies - which must be determined by the jury. - Another way too
made is also practised - and is the best mode when Palmer 512
the award is illegal - and the action is brought upon
the bond. The Defendant may set out the conditions and C. 18 33
award - & not leave it for the Plaintiff to do - then he
must go on to show that the award was illegal &c. - But
if there was no award in fact - this method will not do
(and I don't see as it will do if he pleads no award). - If the defendant
pleads performance - he must set out the award and
his performance - and by the old rule if he pleads per-
formance he must show upon the record how he per-
formed it - so far is no more than is right in many ca-
ses - but they went farther - In all collateral acts as
if he were awarded to go to Hartford and take up goods &c
he must show not only that he took up goods but that
he actually went to Hartford - The true principle seems
to be that where it is a matter of law merely then the
manner of performance should be averred - as if goods

Award were to be given or released — but if it were ~~an~~ a
 more matter of fact — as a collateral act — then a
 general averment of performance is sufficient without
 the manner of performing. Our rule is not found-
 ed upon either of these distinctions — but a general
 averment of performance is sufficient in all cases.
 It seems to be a well established rule — tho I don't believe
 says the judge it is founded on good principles — that
 where tender has been made — it must be averred that
 there was a refusal — and also still ready — even in
 case of a collateral act — which is the only case where
tout lempspist must be averred. When the precedent
 duty is on the part of the Plaintiff — the defendant must
 state this in his plea — and also his readiness to perform
 on his part — this says the judge is the rule found in the
 books and it is better to plead so — but if readiness to perform
 on his part be by any means omitted I would not so much
 give it up — without argument. — Suppose the Plaintiff
 declares on the submission tried — Defendant pleads over.
 8 Loh. 81 D pleads no award — The plaintiff in his replication
 (or general demurrer) must admit that there was no award
 and state a revocation of the submission before the award
 was made. When the Defendant pleads no award —
 the Plaintiff cannot reply that there was an award
 1 Sid. 370 for then the issue would be upon the existence of the
 award & not the illegality — which would make the Plaintiff liable to be driven

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In action on an award the defendant may plead no submission - but in action on the submission he must plead no submission - but must plead non est & Sid. 290
section to the bond without praying aver. Suppose an action was brought upon a submission bond - the award by the terms of the condition would have been made on the 1st May but by a mutual parole agreement the parties agreed to enlarge the time to the 1st June and the award was accordingly made on the first of June. The defendant pleads no award. The Plaintiff sets forth the award after reciting the conditions - and on trial undertakes to prove the enlargement of the time by parole evidence - but he is stopped for no parole proof shall be admitted to add or take from a written obligation. 6 D. R. 592
If the action had been brought upon the award then parole testimony might have been introduced to prove the enlargement &c.

As to reference by R. U. S. & of C. P. U. S. The mode of proceeding in England was introduced by Statute - which Statute is not binding in this Country nor have we or any of the States a Statute like it - but our Statute and that of the other States are founded upon the principles of the Com. Law previous to the making of the Statute in England. Our Stat. enacts that upon affidavit produced before the Sup. or County Court of the submission of the parties by mutual agreement - and

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by ^{or} ~~by~~ ^{the} personal appearance of the parties in court and
award acknowledgement of the submission and desiring the
same may be made a rule of court - it may be entered
on record in Court - and a rule of court shall there-
fore submit to and be bound the award which the
arbitrators shall make and return into court - and
execution may go out immediately - or attachment

1 Ad. 445 for contempt - By the old rule of the Com. Law
11th May 85 no attachments were granted in any case of this
152 kind. - Afterwards it was the rule that if remedy
could be had in no other way then attachments would
go out - the former is the rule in some of the States &
the latter in others - In this state there are two in-
stances ^{only} where attachments will be granted - viz- 1st
where there has been a revocation of the submission
2nd where the controversy submitted and the award there-
on are merely matters of right - as if the dispute be
which shall use a certain stream of water - In all other
cases execution goes out as in all suits & it is sim-
ilar to a verdict of the jury. - The general principles
which the courts of the United States have adopted are
conformable to the last common law rules. But how
is the attachment to be got out? - The plaintiff brings
a copy of the rule of court - upon affidavit by one of
the witnesses being produced - and a writ & have the De-

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Defendant brought into court & show cause why he should
~~perform the award~~ attach must ~~show~~ not be granted - If he does not
appear accordingly at the time and place mentioned
in another affidavit is to be produced - and then the writ of
attachment immediately issues. But if he appears well
he may plead the illegality of the award - if his plea is good
the Plaintiff is dismissed - but if ill - he is
ordered to perform the award - if he does not then
an attachment is issued. Suppose the
submission both still remains - after the award and
attachment as above - can the Defendant's body be
taken - The taking of a man's body for debt is al-
ways considered in lieu of the debt - it is as if the
Judge ordered as cash - As long as the Plaintiff has his Defendant's
body he cannot stir one inch against his property - 1st. 605
tho he be ever so rich - but if he will release his
body he may then lay upon his property. The court
do not always grant attachments even in the best cases
above mentioned - but they have a kind of discretionary
power and sometimes will not grant one - as if it were
be a hard one - Summum jus

In what cases Courts of Equity will interfere and en-
force an award. Generally where the award was to per-
form a collateral act Equity will decree a specific
performance - & in every case where the award is
made a rule of this court - Chancery will decree a performance

But where the submission is merely to the award
 and money is awarded to be paid - performance
 may be compelled by courts of law only - unless
 as before the award be collateral act. Generally
 each court compels performance of those made
 under their respective rules - But sometimes
 Equity will decree a specific performance of an
 award under a rule of a court of law - as when
 the statute of limitations had barred the recovery
 of an award at law - for all complaints concerning
 the corruption or partiality of the arbitrators must
 be exhibited within two terms after the award is
 made - or a court of law will give no relief. When
 a submission is made out of court and a collat-
 eral act is awarded - a bill for a specific performance
 will not be retained - unless there has been some sub-
 sequent acquiescence. The court will never compel
 a defendant to discover a breach of an award by his
 account - as where an award was that one should
 never throw down another once again - the Plaintiff
 suspected the defendant did it and brought his bill for
 discovery - which was not retained. - Where an
 award was made that one should pay another
 40th in ^{the} week in satisfaction. He under by the
 old rule if the money was not paid by that time
 the right of the original cause of action ^{is} ~~is~~

10th. 74

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But now the award may be pleaded in bar of an action
on the original cause of complaint - every
award is pleadable in bar if the Plaintiff has the
means of compelling performance of the award
Where the award creates a new duty instead of that
was in controversy - the award is a good bar to an
action on the original complaint - but where the
award only extinguishes the ~~the~~ complaint it is
void if the will is no reason the award is not a good
bar as where nothing but an award that all suits
should cease. - Yet in this case it is a rule of law
that it is a forfeiture of the complaint if
if the parties do not cause all suits to cease. - &
says the judge there seems to be no reason why it
may not be pleaded in bar. An award may be
pleaded sometimes in bar of an action between one
of the parties and a third person. Thus where
if one of the parties sues out an attachment ag-
ainst the other party - an award - and
C becomes arbitrator for B - promised A pay what
ever was due to C - B ~~then~~ ^{had} ~~then~~ ^{became} arbitrator before the award
was made - If C is sued on his bond or promise he
may plead the award in bar - so if it complains
of an assault & battery made by B, C, & D - and the cause
matter is taken up only by B & D & B is awarded & pay
in satisfaction of the assault & battery - this award

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appointed whose servant held previously declared (mistake)
what would be his opinion. — Or where one party 2 Nov 101
said he could satisfy the arbitrators if they would 251
give him time & they gave more time. Or when
one party was sick and could not attend. Or when 30 Nov 362
one of the arbitrators was heard to say before the
parties were heard — I'll make the award pay cost, — Or 21 Dec 51
where one said I'm glad of an opportunity to bulk his re-
minder. So where one of the parties undertakes to
hold out he can refuse to pay the fees of the arbi- 2 Nov 705
trators — the other party paid the whole fees without
which the arbitrators agreed to deliver the award
So where the arbitrators were creditors of one party 1 Jan 151
So any species of fraud in the parties by which 14 Feb 77
the arbitrators are deceived. — This is a case when it is
extrinsic circumstances were inquired into by a
court of law — — It has been the custom in this
State for courts of law to set aside awards for corrup-
tion & partiality. This has laid foundation for a
question in this State which has been agitated ~~but~~
in the County court in the superior court and 10 Dec 51
supreme court of errors. — This question was 10 Dec 51
raised — thus — A moves a case for B — by the process
of law — if any matter of difference or dispute was
to arise it should be committed to arbitrators — The case was
lost — it was held that to know of the loss before the parties

17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

10-8

Debt - is an action founded upon an express ^{contract} contract where the certainty of the sum appears upon the face of it. In this action the Plaintiff recovers in numero and not in damages. - The word express as here used is to be qualified for the meaning is not that the contract is express in all the terms of it - but may frequently depend upon the market price - Debt will lie in all cases where Sender ^{money} will discharge the contract or where the maxim id certum est quod certum reddi potest will apply - Interest is recovered in this action because according to the last maxim it may be discovered by a known rule of law. The action of Debt has fallen into disuse in all those cases where a sum of money will lie - probably because in this action the debtor was allowed to wage his law - & thus by his own oath that he did not owe the creditor any thing - and the oaths of eleven men that they believed he spoke the truth he might exonerate himself from the debt. It is true that the action of debt would lie as formerly if now introduced. If however this action were again revived Wager of Law would not probably be revived with it.

The action of Debt lies - 1st upon simple contracts. 11th. 94
This has now gone entirely into disuse and Ass.
has taken its place. The old idea that the defendant should be allowed to wage his law in this action was 9th. 87

so strict that if the debtor should die this action
 would not lie against his Executors. because says
 the law may be the testator (had he been sued) would have waived
 his law but the Executor cannot be not being sup-
 posed privy to the contract. It seems then that
 this action will lie in those simple contracts only
 Cro. El. where the defendant was personally a party to the
 135-140 contract - as if one promises to pay the debt of
 1 Sal. another - debt will not lie - but the Plff. must bring
 23 an action on the case - So also if a bill of exchange
 be indorsed over to a third person - debt will not lie to
 recover upon it. The next class of cases in which
 the ^{action} lies is that of Bonds. And in general this is the
 only action on bonds - Debt on covenant is in some
 cases concurrent with the action of Covenant - In debt
 on the penal part of the bond if the defendant makes
 no defence the whole penalty will be recovered - because
 if no defence is made the conditions of the bond do not
 appear upon the record - But when the defendant ap-
 pears he avers over of the conditions and has them
 proved upon the record - the Court will then see that
 the penalty is chance due to damages. So that
 it is not now strictly true that the Plaintiff recovers
 in summe but only in damages - tho the forms of
 law are so far preserved that judgment is in fact ren-
 dered for the whole penalty but at the same moment

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judgment is sent down the court set about, having
down the penalty to damages. - who in this respect
they set as a court of chancery. Here a great
field is open for treating of bonds in general - which
able to make them &c vide Parent and Child - when
a bond is rendered void & then originally void by reason
of duress or fraud for which see under the title of
Contracts - duress, usury &c. - Where a freehold
estate or an estate for life is leased and the lessee
dies the executor cannot bring debt on covenant for rent.
But where one shall land by lease for years or lease at will
if this lease letted to another - debt for rent would at
all times lie against the last lessee in favour of the first
lessee or in case of his death - by his executor. The action
of debt is the proper action for recovering rent in arrears
at present - Since the Stat. of Frauds & Perjuries it has
been questioned whether the landlord could have an ac-
tion of debt against a tenant for years or at will hold-
ing over the term of 3 years unless there had been a written a-
greement - It is however now settled by Stat. 4 Geo II that
in this case debt will lie. It should have been observed
above that the penalty of a bond cannot be changed
down in England in a court of law - but to be relieved
application must be made to a court of chancery af-
ter judgment in a court of law - In this State our
courts of law are vested with the power of chancerying

200 down to damages by Statute.

Bail Bonds

As to Bail Bonds or Bonds given to the Sheriff with surety conditioned that the person whom the Sheriff has attached at the suit of another appear in court &c. At Common Law there was no such thing as the Sheriff taking a bond for *mesne process*. But by Stat. in England and similar ones in all the States in the Union where a man is arrested upon *mesne process* the Sheriff instead of committing him to gaol is to take a bond with surety. The Sheriff is obliged to take *2d* bond if offered with sufficient surety (ie) if the bondsmen is able to pay the debt for which suit is brought. — If the Defendant does not appear in court at the proper time nor surrender himself to the Sheriff according to law then the bond is forfeited and the bondsmen or surety become liable for the debt either at the suit of the Sheriff or the creditor — The debt or judgment instead of the penalty being the measure of damages. The Sheriff in taking this bond with surety has to exercise some judgment and discretion — he is frequently placed in a delicate situation — if the bail or surety fail it is as if it were his own fault & he becomes immediately charged with the debt. We know says the Judge that there are many cases where the defendant himself is abundantly able to give security to the Sheriff — and the Sheriff would be

57
satisfied with such security - but this does not ~~and~~ ^{contract}
the ~~proph~~ of the law. The object of the bond is to have
the man in court - and if the man does not appear
in court the Sheriff is liable for the debt. Suppose
the bondsmen break - by a very late decision in
England - which is concurrent with a series of de-
cisions in Connecticut.

The Sheriff may assign this bond over to the cre-
itor & the creditor or Plaintiff may be obliged to take
the bond. This is our law and this is the law in
most or at least in some of the States - In some
of the States the law is such that the assignee may
bring suit upon the bond in his own name - but in
this State the bond must be sued in the name ~~of~~ ^{of the} Sheriff. I don't know says the judge whether ~~this is~~
our law in point of principle or not. In the English
Statute which allows the Sheriff to take a
bond with surety &c the word Sureties is used - In
some of the Statutes of the States the word surety is
used ~~and~~ and in others the word sureties - In those
States where the word sureties is used it has been very
much agitated whether one bondsman is sufficient
There have been accordingly some decisions that there
must be more than one bondsman - but by the law
as established in England - it is sufficient if there be com-
petent security & it is no matter whether there be only one or more ^{men} bonds.

Debt
Bail Bonds

The Sheriff has a good remedy about it if the Sheriff himself cannot recover upon it - so it has been decided that in debt on simple contract and this rule will reach all other actions - if the Sheriff takes a mere parole promise either of the defendant himself or of him with other parole surely it does not answer the purposes of the law - it is within the Statute of Straus & Perin's and the Sheriff becomes liable for the debt upon the failure of the defendant to appear in court. The Sheriff may if he chooses take a bond of the defendant himself but it is under the same circumstances and at his own risk. In this State there is but one return day and on this day the defendant is bound in the bond with surety to appear - but suppose the Def. does not appear on this day - is the bond forfeited and the Sheriff liable - If the defendant appears in court at any time before judgment rendered the surety are discharged - but suppose he does not appear before judgment rendered & judgment goes by default & execution is taken out - here also the bond is not forfeited so as to subject the bail. But if after the execution has gone out the Sheriff returns non est inventus the bond is forfeited and not before. After the Sheriff has returned non est inventus the defendant cannot surrender himself so as to

discharge the debt, & cause the defendant become
charged with the debt. The Sheriff need not wait till
the last day of the execution before he returns non est
invenit but he may, after due search, return non est
at any time within the life of the execution. If the
Def. appears on the return day & the bail has been discharged,
he is not admitted to defend in the action until he
has in court given special bail with sufficient sure-
ties to abide final judgment if the Plff acquire the
writ. This bail is not forfeited until non est invenit & then
be returned as before. This kind of return is not
good where the writ is a writ of judgment - and a scire facias
may be brought upon the recognizance but the
body of the defendant (or surety) cannot upon the scire
facias be arrested. If the Def. is a person who
at the demand of the Plaintiff or if required by the
Plaintiff who gives the writ, he gives a bond with
surety for the security his writ shall interfere in it
on return of non est invenit with his estate. The
bondsmen are liable. The Sheriff on the return
of the defendant may be arrested at the suit of
other parties. The Sheriff cannot seize defendant's
real property to satisfy the judgment. But if the
Defendant has real or personal property, which he
may assign himself, he may sell it at all times in civil
actions or he may assign himself by a bond with surety.

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Docket

The Sheriff of the county may either direct the
Sheriff to arrest the body - direct him to lay upon the
land. But the defendant cannot screen himself
from arrest by offering land. If the Sheriff arrests
the body he cannot lay an attachment upon the
property of the defendant until he releases his
body. The Sheriff cannot lay upon the land if
the defendant shows sufficient personal property
to respond the judgment to. A replevin comes in of
the same nature as suppose it goes out a writ
of attachment against B. - The Sheriff attaches
property ^{of B. & takes it into his possession} takes a bond with surety that the prop-
erty shall be delivered to the Sheriff after execution
taken out against the defendant - The defendant
brings a writ of replevin to recover this property and
gives a bond with surety to make his plea in replevin
good.

The action of debt lies also upon judgment. Some-
what is said in the other divisions it seems that
formerly debt would lie when judgment was
a year & a day after judgment rendered. But
now no writ of debt but when the judge has taken
judgment on a confession which I observe in the
book to State in Brems that debt would not
formerly lie until the time for taking out execution
has expired & a year & a day after judgment rendered.

152
The plea was once so it is certain that it is not
not a new plea. There are no traces on the face
of the plea of its being altered. But the law has
probably by chance been changed so that now
it will be more important with a view after
judgment is given. There is no doubt that the
rule of the court is to give judgment in the
plaintiff's favour to be made out upon judgment. But it
is not necessary to do so. The law was not
changed. But where the defendant has been 539
wronged, a further remedy is put in his way. And
if the remedy is the execution of the debt, or
some other judgment is given. In this state of
things, it is not possible to say which execution
cannot be taken out. In this regard, it is
judgment is not known here. It is not where the
remedy was not a debt of the execution
where the plaintiff cannot get the execution here
the same kind of effect is so complete in some
cases as if execution is taken out, no interest
will be allowed upon the judgment. But if it
be brought in, interest upon the judgment may
be awarded up to the time of the judgment.
Whether or not it is a debt or a judgment
debt or judgment in any other case besides the
particular mentioned case, and the judge is not here

Debt

In Debt on Judgment the Defendant cannot make use of any matter of defence back of the judgment. It is said there is an exception to this rule - viz that the defendant may give in evidence that the judgment was obtained by fraud. It is true the defendant may plead fraud in the judgment - but it is doubtful whether this is strictly speaking an exception - for a judgment says Judge there is no judgment if it be obtained by fraud. An enquiry can be made into the original cause of action. Any thing posterior to the judgment may be ~~set~~ set up for defence on the part of the defendant, as a release or discharge &c. Upon the principles of the Common Law it is difficult for the defendant to set up a release effectually for matter of defence - because no parole testimony will be admitted to contradict a judgment or execution - a written discharge will be good matter of defence. In this State we do not permit parole testimony of a release & as we do to destroy most written contracts. We find in an old authority a very inadvertent judgment as to parole proof of a discharge. This probably gave rise to the present rule of the Common Law.

Syer

If the Sheriff lets the defendant escape when taken upon an attachment or execution - he cannot by the C.L. be taken again and the Sheriff becomes charged with ^{the debt} the debt.

27

This is considered a proper punishment for his continued neglect - his criminality and breach of trust - he, & not the Plaintiff is guilty of an escape (Latin phrase - biology is used) - he cannot take the debt again - this is a presumption that the debtor has paid - but this presumption may be rebutted - *onus probandi* being on the part of the Plaintiff. 248

Debt will lie also upon Foreign judgment. Foreign judgment is *prima facie* evidence of debt only. Does and the original cause and ground of action may be inquired. Some have supposed that by the Constitution of the United States each State is to give full credence to the judgments of Courts in other States - & there have some judicial decisions in conformity to this idea. But the United States have decided differently - & so have the courts in some of the States - and this seems now to be the law that England - the United States & each State separately ~~are~~ to be considered in respect to their judgments as independent Nations.

Suppose it gives abroad to is conditional that to the son of it shall be faithful as a clerk to his heirs executors administrators &c (or without the words heirs executor &c for this makes sense. no alteration as to the law follows as to the clerk is faithful - but after the death of the executor of to continue to trade in their own name & give employ to his clerk - This clerk afterwards

21st

- concerning money - debt was borne it upon the bond & one question was whether the bond was forfeited - The court held that the bond was not forfeited. - In another case where A & B were partners - C was an agent for them & the father of C bore a debt & C told his son that he should be paid - afterwards C went to London & the partnership with A & B - the father's creditor -
- 220 There is no doubt that to be a creditor of the Partnership - Part in ~~in~~ another case where instead of giving bonds for all unfaithfulness - ^{to the charge} a bond was given to answer for all unfaithfulness in the store - here the bond was held to be forfeited
- 222

It is a well known principle of the Common Law that no action can be brought against the heirs upon a mere personal contract in which the heirs are not named - but the action must be brought against the Executors - If in a personal contract the obligor binds himself & his heirs, executors &c the executors as well as the heirs are liable - The heirs are always liable for specialty debts. In Com. the executor has the control or agency of the real as well as personal property of the testator - It does not it is true rest in him as the personal property does - he must appropriate the ~~personal~~ ^{personal} estate first - but on deficiency of ~~the personal~~ ^{the personal} estate he is empowered to sell the real est. But says Judge Keble ^{can} conceive a case where a creditor may have satisfaction of the heir - tho' their be personal property enough. Suppose the Testator had given an obligation payable 5 years hence & died - The executor could not be sued before the 5 years had expired. The Executor settles up all the real of the estate - pays the volunteers &c and squares off - afterwards and before the time of payment had arrived

the executor becomes a tenant in fee simple - if a lease is made before the executor's discharge of his duty, it is void - The executor must give
it out of his pocket. But the executor may have his estate and a re-
version left in the reversion. It is necessary that the executor may have
his remedy against the heirs - In Ireland the remedy is to be as-
tained in Chancery. The executor may sue against all the reversion-
ers jointly or jointly at discretion. The latter case is the only ex-
ception to the rule that in contract where the heir is not named
he shall not be liable.

The action of debt lies also to recover ~~rent~~ reserved

no other action lies in common cases been brought.

Suppose the lessee assigns over his term - can the lessor
sue this assignee for rent - & if he can is the lessee
discharged. I am supposing a case such as the judge
where the lessee does not reserve rent for himself.

As the law is now established the lessee is liable by
priority of contract and the assignee is liable to
the lessor for the enjoyment of the term - so that either

there may be liable at the election of the lessor - But
if the lessor once accepts the assignee for his debtor

by calling upon him for the rent - or suing him for
rent - or actually receiving rent from him - the lessee

is discharged. Suppose this assignee - assigns over
the term to another - The lessee is as before liable by
priority of contract - and the last assignee is liable for
the enjoyment of it, but the first assignee is not liable at all.

⁵²⁷
Debt Suppose Lessor for years dies - the executor is liable
for the rent - and this on the principle of contract.
626. But if the executor assigns over the term - he is not
720 liable either by principle of contract or the assignment
alone & it. This is turning the lessee over for his rent to
24 some one to whom he might have been unwilling
take as his debtor. And he is liable to be defeated for
his rent. Rent is incident to the reversion and
30 goes with it - If the Lessor sells the reversion the
626. rent will go ~~to~~ the assignee. But suppose the Les-
328 sor sells the reversion and the lessee assigns his
term - can the assignee have an action of debt ac-
count the assignee. I know of no reason says the
judge why on principle he cannot - but yet it
has been decided that the assignee can have his
126. remedy against the Lessee only - So if the lessor
24 sell only the rent and not the reversion - the assignee
626. of the rent may have his remedy against the lessee
328 The same is the case if the leasehold be devised &c.

The action of Debt is the proper action to recover
money of an officer or agent who has collected it
for the Principal. - And this action will lie whether
there had been an express contract between the Prin-
cipal and agent - that the agent or officer should deliver
the money collected - or whether there had been only
an implied contract. So that it is very far from

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being true that the action of Debt will lie in reple contract
where the contract is not express. This action is
in this case and in another for recovering against
the keeper of a jail or Sheriff for an escape - con-
current with the action of ^{indebitatus} detinent. At C. Law
there was no remedy of a civil nature against
the Sheriff or jailor for an escape - it was an of-
fence punishable criminally only. The Statute
afterwards gave to the creditor an action of account
against the Sheriff - after this a Statute made the
Marshalls of the Prison in London liable in an action
of debt - The courts extended this provision to all
the prisons in the Kingdom - and from this the
Common Law grew up. This Statute was enacted
long before the emigration to this country and
of course extends to all the States in the Union.

If law is brought against a Sheriff for an escape in-
stead of the action of debt it has been doubted whether
the creditor can recover of the Sheriff the debt as
well as the damages - for if the Sheriff let the debtor go
he was thought to be liable only for the damages - and
the creditor may secure his debt by recaption. This
doubt may be removed by recurring to the true prin-
ciple of the Common Law. Where a certain sum
of money is recoverable in one form of action and
another concurrent action may be brought for the

Debt the same cause of action - the same sum shall
be recovered in this as in that form of action. - The
form of action ought to make no difference in
respect of the sum recovered. This point has been
agitated in this State and in a late case reported
under the name of *Turner & Co. v. Turner* it is settled that in an action
on a debt the jury give less than the sum
declared for. - It has been said that the action
of trespass on the case was authorized before that of
assault & debt, but the contrary is true. - The Statute of
H. 8. c. 11. authorized the action of debt & prior to the be-
ing law for that of Case. - It is a maxim not univer-
sally true but nearly so - that there is no injury without
a legal remedy. The Sheriff when sued for an escape may
plead reception in defence. It makes no differ-
ence whether the escape was voluntary on the part
of the Sheriff or not - for in either case he is equally
liable. - But damages recoverable in debt are
limited. There is a material distinction between a
bond which is payable at 5 several times - with one
where the conditions are that it shall be paid at
5 several times with 2 periods - as where the bond
is to be paid at several times - there is a difference
between a single bond - and a bond with 2 periods
- as in the former case the recovery
will be for the whole for the last period only.

but in the second of the just payment here I said contract
by the time - the conditions of the bond are broken
and of course the penalty is forfeited - and now
maybe for the whole amount - but the Plaintiff
cannot take out execution for more than the
last condition of the bond when the execution is
taken out - thus when one payment is made the
is in action on the bond payment will be recovered
for the amount of all the payments - & - execution
will go out only for the first payment - in English 105
This is the matter in English - but matter in (106)
to render judgment for one payment only - execu-
tion now out for this - and as for the other pay-
ments a *divers* *lacias* issues when each of the other
payments be made - But where a covenant
is entered into for the payment of money at several
times - recovery may be had the same as in double
bonds. As to the manner in which the right
of recovery is proved. - The subscribing witnesses
must be produced on trial - & the reason why
these must be produced is because men that are
not so apt to be witnesses are supposed by
the law to be good witnesses - and better than ac-
cidental bystanders. The law will impute the
Plaintiff in not producing the subscribing witnesses
when from certain causes they cannot be procured

207
The subscribing witnesses are in Scotland or Ire-
land. Other witnesses may be introduced - But the
subs. witnesses have never been dispensed with where
in England except in one case where he was, one
to York - he was dispensed with on the ground of
his being out of the reach of process. - If the subscri.
witness is dead - sick or languid - or the law terms it in jail
or out of the reach of process other testimony may be intro-
duced. N.B. If the witness be out of the State he is deemed to be out of the
reach of process - also an idiot or a madman cannot testify. After
the subscribing witnesses have been produced & have
testified then other testimony may be introduced
but not before. There is reported one remarkable
English case where the three subscribing witnesses to a will
testified that the testator was insane - they were
contradicted by the whole neighborhood - and other
testimony was produced to prove that the testator was
of sane memory - & in process of time it was disco-
vered that the 3 subs. witn. had perjured themselves and
were convicted accordingly. If the subs. witnesses be dead
it must be proved that he is dead by such testimony
as the circumstances ~~in the nature~~ of the thing
will admit. It be proved that he was sick of the
yellow fever in Gaudaloupe & that he had never been
heard from since then - that connects with an ab-
sence of sometime - as 5 years or the like - so as to effect a

believe among his neighbours and friends that he is dead
is Dead - this is sufficient and the court will presume
he is dead. Testimony may then be introduced 48
to prove the handwriting of the sub. witness. - But 2th
in all cases if the instrument is not required to 834
have sub. witness to it - neither the sub. wit. needs - 55
to be produced - nor proof of his death or handwri-
ting - If the subscribing witness had become in-
famous after signing other evidence will be adm-
itted

The action of Covenant is founded upon a writ-
ten agreement entered into by & between the par-
ties under their hands and seals. In order to make Covt.
a covenant binding upon both parties it is not at 244
always necessary for both parties to sign it. So one party 106
by the he did not sign it by accepting and acting 80
under the instrument becomes thereby bound to all 110
intents and purposes as much as if he had signed 518
No form of words is necessary to make a covenant 605
binding - it is sufficient if the intent of the parties 699
can be discovered upon the face of it - As it is in *Low. Resp.*
Lessor binds himself to give the lessee quiet enjoyment 318
8 for this it is agreed that the lessee pay 5 £ - here both
are bound - So one covenants to lease to J. S. - he (J. S.)
willing to pay rent 8c - so if these words are
used and the lessee shall repair the Mills - so it is binding on both.

107
Covenant the words of the covenant must clearly import
an agreement - suppose the lease covenants to put
114 in the glass provided he get a lesser fin in the glass - the lesser
80 is not by this bound to furnish glass. - but where
12th. the words were thus provided he the lessee finds the timber
88 and it is agreed that he shall - here the lessee is bound to
170.6 furnish timber to make the repairs agreed on.

114 Where the covenant refers to some preceding instru-
ment upon which it is founded - here the words
of the covenant are so limited by the words of
that instrument. it married a widow who by a for-
mer husband had children A.B.C.D - She fathered
2 Vent. of these children to each of these children except
140 D - a legacy - it upon his marrying the mother of
18p. these children covenanted with her to pay A.B.C.D
215 each so much - being legacies left them by & the testator - it
the husband was adjudged not to be held to pay D any
thing. for it was predicated upon the will and the will
was found to be otherwise. Where the instrument
declared upon is void and a covenant is contained
in said instrument - as if one give a deed of land
M. K. to another and the same land be claimed by a
27 3^d person - the deed is void - till is the covenant
that he is well served of the premises void - or is
the deedor liable on this covenant - is he liable on the
covenant wherein he declares himself to be well served.?

60

Covenants to perform impossibilities - or those that Contracts
are rendered impossible by the act of God are said to
be void. It is not true to the full extent of the rule
that when the thing covenanted to be performed becomes
impossible the covenantor is therefore discharged. All
the cases under this rule will admit of this construc-
tion viz that where the covenantee in cases of inevitable
accident would have been in no better situation had the
covenant not been made - here the covenantor shall
be discharged. - as if one is arrested and another
gives bonds that he appear in court at such a time
and in the mean time the principal dies - here the
Plaintiff is in no ~~better~~ worse condition than if the
bond or covenant had not been given - therefore the
bail are discharged. Suppose one covenants to be in 2d m.
Charleston with his vessel at a certain time to take on board
a cargo of cotton, tobacco or the like - but by
reason of contrary winds - storms or hurricanes it is
rendered impossible for him to be there at the day
or perhaps to be there at all - here the covenantor
is liable for all the damage occasioned to the cotton
or tobacco by floods or tempests after the time he was
bound to be there. It is a general rule that where a
covenant is entered into to do what is lawful and this
is afterwards rendered unlawful the covenantor is dis-
charged & whatever consideration money had been paid

108
Covenants by the covenantee may be recovered. So if one cove-
nants not to do what is lawful when a statute comes
1464 to compell him to do it - this statute in law respects
198 the covenant and the parties are placed in statu
quo. If the performance of a covenant is such as
to defeat the intention of the parties expressed in the
in the covenant - it is a breach. as where issue
covenanted to leave upon the land all the trees growing
at the time the lease began - and at his quitting the
premises he fells the trees and leaves them prostrate
on the ground. - So where one covenanted to deliver to
another all the grain thrown out of his breichouse
to be for his cattle to eat - & heps were mixed with it so that
464 the cattle would not eat it. In both these cases the
covenant was held to be broken. Another case is also
mentioned which for crimes says the judge I shall pre-
sently state could not have taken place in this State
This is a case where one covenanted to deliver up to
another a certain bond which he held against him
by such a day - but ^{before} the day had arrived he sued up
the bond and then delivered it - this was held to be a
1464 breach of the covenant. It is the practice in Eng.
48 when one recovers upon a bond for the breithnotary to
cancel the bond thus - and give it up to the party
who sued upon it - but in this State the bond is kept
in the files of the court & that the Plff. could not get at it.

as to the technical terms used in the covenant the ³⁰⁹Contract
construction of them must follow the common
usage - as if the words glass & wine or barrel & cider
were used in the covenant - the liquor only - without the
glass or barrel is immediately intended but if the
words ^{the} Surplusage of wine or rum or malmsey - are used then
it is to be understood that the cask or vessel goes with
the liquor - as to covenants contained in instru-
ments of conveyance - in our law we have 2 kinds
viz. 1st Warranty & 2nd Of Seizin - as to the 1st
of Seizin if the Seller was not actually seized of the
premises sold he is immediately to answer for all
damages in action upon the covenant. But a cov.
of Warranty runs with the land - the covenantee
cannot bring his action upon the warranty till
actually evicted. Where one is sued on the warranty
it is a common thing (tho not necessary only as to sav-
ing expense) to touch in the warrantors - to defend
in the action. A voucher is a written notice or sum-
mons signed & issued by a magistrate to be served up-
on one or more of those who warranted the land to
the present defendant - in order that he or they who
thus warranted the defendant may bring up all the
evidence in support of the defendant's title which the
nature of things would admit: All the advantage of
a voucher is that if the Defendant who is now sued

Covenant of quiet enjoyment by a claimant gets defeated the process will be shorter in recovering damages against the warrantors. I was engaged in an action against B. where the Defendant in a similar action had been severely, for not touching in his warrantors. This was a case where A sold to B - B to C & C to D - C brought his action of Ejectment against D and recovered - D then turned round to recover damages on the warranty or claim, but lost his case - he then brought ejectment against E with the new evidence furnished by the action against D the warrantors were recovered - now if D had in the first place touched in the warrantors viz. A, B, & C or C only - E the D. would probably have been defeated - & E the Defendant would have saved to himself the expenses of at least 2 suits.

The words Give Grant &c do not imply a covenant by Act. but only seizin. When there is a covenant of quiet
 35 enjoyment (or warranty) - this shall not be construed
 1 Rep. to extend to a commutation against a tortious act
 2d S. by a stranger - as trespass or ejectment where the
 Cro. & covenantee or holder recovers in the action - the cov-
 213 extends only to cases where there are legal claims
 1st. But if the Grantor himself commits trespass or of-
 400 fense it is a breach of the covenant. A covenant
 to save harmless is of the same nature as quiet enjoy-
 ment - and it is no breach of the covenant if a 3d person

commits trespass or claims title or brings civil disturbance
under this covenants direct to the grantee. Where one 320
covenants to repair, as often the case in leases, and to 264
repair up in repair - it shall extend to whatever
erections or buildings shall be raised during the term 121
provided the covenant be in general terms. Where
a lessee covenants to make the necessary repairs it
has been questioned whether the lessee may make
the repairs and charge the expense to the lessor.
The lessor is, it is true, liable upon the covenant - but
in the mean time the lessee may suffer much in-
convenience - & may chance to get prodigiously wet
before repairs can be made by due course of law. 1200
It has been decided that the lessee may make the 237
repairs and charge them in account to the lessor. 1210
The Holt doubted this - unless the lessor had covenanted 420
to deduct the repairs from the rent. 1238

As to covenants to which penalties are annexed in case of breach the obligee has his election either to bring an action of Debt upon the penalty in which case he cannot resort to his remedy on the covenant because the penalty is a satisfaction for the whole. Or he may waive his remedy on the penalty and proceed on the covenant and recover more or less than the penalty. So ties quotes. Where the action is brought upon the penalty no more can be recovered.

even^d than the penalty ever - & this penalty must be chan-
ced down to actual damages in the case now
unless the penalty was in the nature of a specie dam-
age - there is a distinction to be observed between
a penalty in terrorem and a penalty in the nat-
ure of a specie damages - if lessee covenanted
that he not to plough up a certain piece of meadow upon
2228 a penalty of 1000^l - here it is in terrorem. but if
lessee covenanted not to plow the meadow upon pen-
alty of 10^l an acre - here it is in the nature of a specie
damages - so where one covenanted not to mar-
ry any one except the Plaintiff - but if he did he would
pay 1000^l - this is the measure of quantum of
damages.

As to covenants with respect to the time of perform-
ance. - There are 3 kinds viz 1st retroactive and in-
2229 dependent - where what one covenants is not in
655 consideration of what the other covenants & where
non performance on the part of the Plaintiff is no
excuse in the action - & it is no excuse for the defend-
ent to alledge a breach of covenant on the part of the Plaintiff
& each party may sue & recover upon the covenant
before he himself has performed his part. As if one
1246 covenants to lease a house in consideration of a
124 sum of money to be received of the lessee - and the
lessee covenants to give the lessor a sum of money

in consideration of the loss to be made - to which ^{Contract}
the covenant is negative on one part and affirmative
on the other - as if one covenant not to follow & claim
a certain trade in consideration of 100£ per ann. 155
2 Where no obligation arises on one part till performance
on the other part. Where the duty of performance on
one part depends upon prior performance on the other 171
3 Where the conditions are dependent. There may be dif-
ferently conditions in finishing out on either side to 165
the prior condition & there seems to be some technical
niceties in the books on this point. - I remember
with B to transfer stock once before such - B covenants
in consideration of the promise to pay 40£ - a ques-
tion arose on the meaning of the word promise as
here used & to what it referred - if it referred to stock 181
then clearly the stock was to be transferred first. 155
if the promise was meant to refer to the covenant - is
that it would read thus To covenants in consideration of it.
would be to perform then the transfer of stock would not
be a condition precedent. Under only by the Statute
would be sufficient to induce him to his action. If
one covenants to convey land within six months - and the
other covenants in consideration of the land to be conveyed
to pay a certain sum of money - the condition is per-
fectly on the land & time the is to pay the money. The
Statute of 12 Geo 2 is where the conditions are mutual

Covenant is apparent on the face of the covenant that the performance on each part is to be executed at the same time. Here the judge mentions the case of the shop again. A shop was covenanted to be delivered in consideration of 200^l - the other party covenanted to pay 200^l in consideration of the shop. An action was brought by one party for breach of covenant in not delivering the shop - & the other brought an action for the breach of covenant in not delivering the money - Both actions were before the court at the same time. The sustenance neither of them for no right of action could accrue in this covenant in favour of one party until tender or actual performance on the part of the Plaintiff.

Further as to the assignee of a lease I mention the Law here says the judge on this subject. - I know not that it is of much use in this country at present - but as the colonies grow more populous - so leases will be more frequent & the law will sooner or later be established. This Country is governed by its own rules and frequent is peculiar to it. How far it will be policy to deviate from the common law rules on this subject must be left for future discussion. Suppose the lease covenants with the lessee to repair the house or build a stone wall on the leased land - or to build a stone wall on a piece of land not leased. By which and what of these covenants would the assignee of the lease be bound.

The general rule in this question is, that the contract intended to reach all cases of this kind is that, what-
 ever the lessee engages or covenants to do concerning
 the premises and things in eye - this shall bind the
 assignee tho' not named in the covenants. But if the
 word assignee is used - then the assignee is bound
 to do to the premises whatever the lessee covenanted to
 do. But covenants to do to or concerning a thing
 not belonging to the premises - is not benefiting the
 premises does not bind the assignee whether the
 word assignee is used or not. If the breach of a cov-
 enant is complete before the assignee comes into the
 possession of the premises - the assignee can in no
 case be liable for such breach. The liability of an as-
 signee arises from the principle of his enjoying the
 premises. If therefore one covenants to pull down a
 barn and build another in the same place within seven
 years and he neglects to do it and after 100 years
 assigns it - the assignee is not liable. The assignee
 be assignee of the whole term in order to make him
 liable. There are some exceptions to this rule which the Judge did
 not mention (see Spinney). The the lessee assigns 441-74
 his term and the lessor accepts rent from the assignee long
 yet for the breach of an express covenant even after
 assignment the lessee is liable in an action of covenant. But
 the in an action of debt he is not liable. 418-155, 54-158, 155

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1681. Ref

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441-74

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100

100

Account. This is the case with the lessee - but the assignee
 is no more liable in an action of covenant than
 in an action of debt. - If the lessor brings coven-
 144 ant against the assignee - the assignee may plead
 81 assignment before the cause of action accrued. for the
 assignee is only liable in covenant for a breach com-
 140 mitted while in possession - & not for a breach after
 he has assigned. All these cases are ap-
 plicable only to real property for the assignees of
 personal property are not liable at all to the lessor
 145 (if he may so be called) The lessor must look to his
 11 lessee only - as if a flock of sheep be assigned &c

On the other hand the assignee of the lessee
 has his right of action on all covenants against the
 lessor - as quiet enjoyment &c which go with the
 240 premises. - The same right & remedy descends to
 92 the heir - extends to all who come in by operation
 of law

As to the action of Account it is very much dis-
 used in England & in this Country. I have seen
 but one case says the judge within a century back
 this is reported in Wilson. All the relief sought by
 this action is given by courts of Chancery. In those
 of the States where courts of Chancery are not in
 146 existence the action of account is still used. This
 19 action it is said will not lie for a thing certain as 10^{or sum} £

As to what charges it may be brought for and Contract
against - 1st It lies in favour of a ~~ward~~ ^{ward} against
a guardian - calling him to an account for the
property of the ward received to his use. 2^d It lies
against persons on the character of Bailiff or
receiver. By Bailiff is understood a person that
hath administration and charge of lands goods or
chattels to make the best benefit for the owner - as to
a person whom the action of account doth lie for the
profits which he hath raised or made - his reasonable
able charges & expenses deducted. If Receiver is one who
receives money and is to render an account of it
but is not allowed any charges or expenses but what
is agreed on by the parties - and in this case the
Plaintiff is to declare by whose hands he received it
An action of account will lie where there is propriety
of contract. Scilicet - will this action ^{lie} for a return
only against any tortious act. It is not brought
to recover damages - but the declaration after
stating that the defendant was Bailiff or Receiver
should demand of him to render his reasonable ac-
count. And the first judgment is accordingly a
quod computet (that the defendant do account) - or in case the
defendant makes it appear to the court that he ought
not to render an account then judgment is final
against the Plaintiff with costs of the suit. sine

judgment, good account being made.
Auditors are appointed to examine the accounts
and as they find their reports if the defendant
does not appear in court the judgment is the
same, good account - but where the de-
fendant would come before the auditors, - here the
auditors are authorised to award the whole sum
demanded and report accordingly. But if the
defendant appears before the auditors he has a
right to be examined under oath relative to the
matter in dispute. - The same is the case with
the Plaintiff. Any matter of excuse as throwing goods
overboard by human prudence is good accounting be-
fore auditors. - So also to have been robbed is a good
discharge before auditors. - So also if the decla-
ration is deemed to be found sufficient judg-
ment is given computed. - Account can never
be swallowed up by a higher remedy - as if one
covenants to account - the action of account is
not concurrent with covenant broken. - Account
lies by one tenant in common, coparcener. &c.
against another where one enters and takes
the profits of the lands. The executor of coparcener
may call the surviving partners to an account.
Sed Bailly or Receiver is universally the general issue
in this action - for if he in his plea confesses he is

179

Bailiff is necessary - there is must account. This Contract
general issue like all others is to be tried by the jury.
But the Defendant may plead in bar he says
how reasons why he ought not to account. He may
plead in bar any thing which shows he was once
bailiff but not now bailiff. - if he has fully ac-
counted he may plead this bar - if he has been discharged 70
or if he has settled up all accounts. Whatever may be shown
pleaded to the action shall never be allowed as a
good discharge before the auditors. You can never show
show to the auditors as the force that you was 21
never bailiff - nor can any matter which might
have been shown to the court that you had been
bailiff but not now - be shown to the auditors.
Suppose say he one takes another hat tortiously
if in an action of account for remedy judgment is
rendered *quod compisset* nothing can be shown to the
auditors to prove that he took it tortiously because
this might have been pleaded to the action. This
finishes the subject of Contract and the actions
thereon. So these actions I shall here subjoin
what is common to all civil actions except *judicium*
viz an *Auctita querela*. This is where the
defendant after judgment rendered against him
can offer some matter to discharge himself from
the process of the execution, as if the defendant had

but I paid up the sum & had nothing to increase it upon
 the execution - or if the Plaintiff had given him
 a release in writing signed with his own hand
 writing, the officer cannot refuse it - he'll say
 perhaps that it is forged or the like - In any such
 case there is no relief to be had except by an *audita
 querela*. The object of this writ is to be relieved from
 the execution. The writ itself is one signed and
 issued by the Chief judge of the County court upon
 application by the party and probable cause shown.
 It is not a writ issued of course. The magistrate
 must have a hearing - The parties are not sum-
 moned that probable cause may be shown but upon
 the representation of the one who takes out the writ.
 It is evident that the power of granting writs of
audita querela ought not to be open to all justices
 of the peace - for it would in this case be liable to
 be abused and perverted. Why this power was com-
 mitted to the chief judge of common pleas in this
 country is not to be ascertained from the books.
 I have looked in the English books and have found
 nothing to warrant the practice except a form of
 an *audita querela* which I saw in Fitzherbert's
Solatus Breuium signed by one of the chief justices
 of the court of common pleas - and which satisfied
 me that this was the practice in England.

As to the effect of the writ of audita querela - for ^{prohibere} ~~prohibere~~
the moment this is heard of the officer if he hath
levied upon goods must return them - if he hath
taken the body of the defendant he is to set him
free again. The party who stops the execution by
an audita querela is to give bonds with surety
to indemnify the other party for the delay &c. in
case the writ does not prevail. If the writ prevails
the judgment on it gives as ample a remedy as
he who sues out the audita querela can have by
an action at Common Law for false imprisonment
attachment of goods or whatever grievance was
sustained by the execution after a legal discharge.

The writ of audita querela contains the substance of the com-
plaint and a command for the party to appear before the
court at the next stated term. If the execution on the original
judgment be not levied this writ will be a supersedeas. If the party
appear in court the trial may go on the same as in any other
action. In case the writ is to be served upon the Sher-
iff who took the execution or only upon the Plaintiff
who took out the execution? The execution is not
directed to any particular Sheriff calling him by
name - nor does the magistrate who issues the au-
dita querela know to which of the Sheriffs the execution
was committed. It is most with reason be left with
the sheriff to determine to whom the writ should be served

Since then it accordingly. Can any one be served with a
 writ who is not named or identified in the writ.
 Therefore it is to be presumed that the writ of audite
 querela is to be served upon the receiver only, and
 what ^{the} the sheriff does after the writ has been served
 the receiver is answerable for. — Thus much
 for audite querela. — The next subject will be
 Private wrongs.

End of Contracts

Appendix.

Page 96
And it is true, the Com. Law that if the infant sells and
sells & makes manual delivery he cannot treat the pur-
chase as a wrong done to the contract as void - & in the con-
tract where he does not make manual delivery of the
thing sold he may consider the purchase as a trespass
& the contract void - But say, I agree to receive I know of no case in
this State which reverses the doctrine. It appears to me to be a dictatorial
principle. Either the vendor is a trespasser in both cases or neither. I cannot
conceive of any reason why a manual delivery should make any difference.
And I apprehend it would not be reasonable to consider him a trespasser
there is no necessity of considering the vendor a wrong done to give the
infant the full benefit of his privilege & it is time enough for the infant to
sue when he has made it known that he renounces his contract otherwise it must
be imposed on him for the purpose of execution without any advantage to him-
self. It should suppose that if the infant had learnt that a man sold him
property to a merchant on credit he might consider such contract as void
if he that property wherever he could find it. (From the Com. Law. vendor. Time)
I am of opinion that such contracts are more reasonable than that a man should be bound
out by the infant may at least be avoided but such contracts will be enforced in equity,
It seems to me that such different rules in the different courts are ridiculous. And it is
reasonable & good policy that such contracts should be enforced and where a man
gives no solid objection against doing so, while paying reasonably
and it is a principle to be observed that law is opposed to justice & reason if it is
unreasonable & impossible then such be rejected. I know of no principle that will
warrant the Court of Equity to support. This is a graceful distinction has its origin

presentation and that the creditor is not to recover either before or after the trial. But this presentation is liable to be rebutted or shown that he received nothing. If the law had made it the duty of the creditor to imprison but it might be said to be wrong but this is not the case. (Hence a bill of exchange)

As to the escape of a prisoner on some point of apprehension there is no difference in the law as to whether such prisoner was upon execution or not. The action must be an action case against the sheriff and not debt. Second before judgment there is no judgment of the demand. At present it has been retained in this state a bill of exchange is not a bill of exchange if it is not insured. provided the judge has been in such a case he is not to be held the work is returnable. Whether the bill is returnable from a decision or not I do not know. In the judgment case the judge in such a case will in case the escape is a matter of property he is to be held for the debt & discharges it - if he is a bankrupt it will be the whole debt.

The principle adopted by our courts when the law is in such is the reverse of this they give small claims if the debtor was a bankrupt & if he was not a bankrupt the debt has been created that no action can be maintained against the County. When the law is in such instead of the sheriff for the insolvency of the goods. The Stat. has provided that the remedy must be by petition to the County Court which is to send the Treasurer of the County to pay the petition. It is provided that we shall we reserve the whole law in this case of the creditor lives out of the State. The Constitution has provided that one in a hundred of our law may be the whole law of a State in every controversy before the National Court. The national legislation have decided that the laws of the several States shall govern their determination.

As to the law of this State no county can be sued in a national court as an authority.

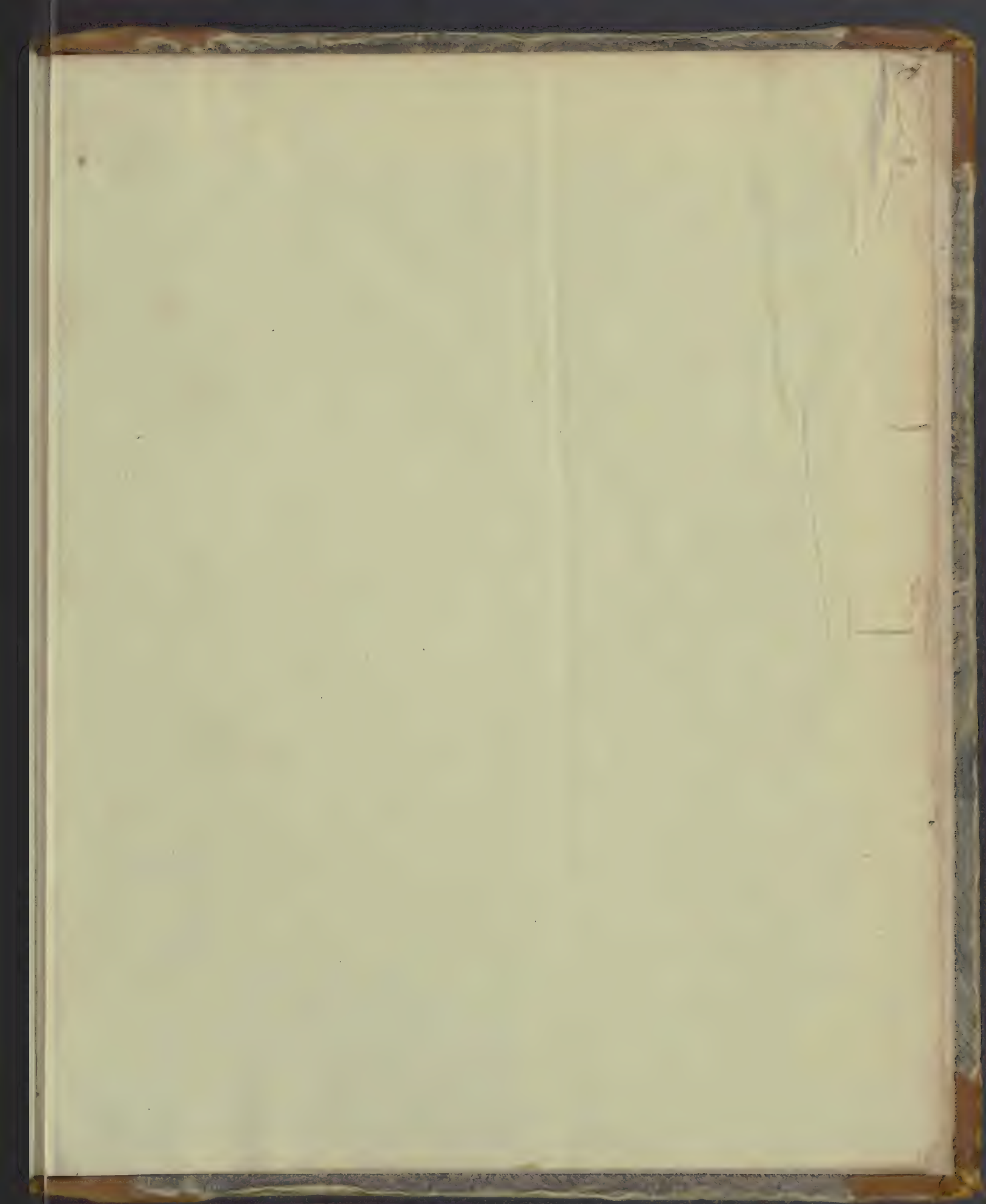
English law practice for the purpose of enlarging the
 prison house is minimal in the State. It depends upon
 usage - the the extent of the ward is prescribed by the County
 Court. And it is at the discretion of the Sheriff to include the
 prison with the lands of the yard & when indulged may
 deprive the prisoner of it at pleasure. When either of these
 it Sheriff has no right to entrust his prisoners at
 rest on any one or some person & a stranger -
 The practice is the other way in the State - but
 a case that occurred last winter will show the im-
 portance of the practice. A stout - sturdy, noisy
 boy was arrested by the Sheriff in Harford County
 & delivered over to a person but a weak minded man
 to carry to his old field yard. He told him & telling
 him a story & came with him very well till within
 some few miles of the field - at a place called New
 Britain where there was a public house. The pris-
 oner had been told to go to the house & stay there
 so on passing the house - & unable to proceed he
 went in & stayed there - they talked a little & then
 with their hands taken up & the prisoner
 released & soon - the house was full of people
 & others - the prisoner in the town said to himself
 that the house was very fine & he would stay there
 to his surprise as he called him - & in the
 next morning he was taken to the house & there
 a little while - the house was full of people & he

Whether deeds & goods or simply for money to ¹⁸⁸
borrowers will have the same effect as to rendering contracts void
is doubtful the authorities being contradictory. I do not know of
any reason why it should not (Rever. M.S. verb.)
By the law Merchant fraud in the consideration of a contract when
by articles such contracts (Rever. M.S. verb.)

as warranty must be at the time of the sale & not a previous con-
versation when no bargain was struck - or subsequent to the sale
But would such a previous warranty amount to a false affirma-
tion when he knew the property to be unsound (Rever. M.S. verb.)

It is immaterial whether the imposition was effected by words or action
or a combination of both which in good conscience ought to be con-
sidered (Rever. M.S. verb.)

Can it be that when an unvarious note is sued in a court of Law the
Defendant may file a bill in the nature of a bill in
Chancery so the contract is unvarious. Spraying relief. And the
court shall before which the suit is are enabled to enforce & by the
order as a court of Chancery & by the same rule as a court of Chancery
why no other. And also this ground it is that by the late decisions con-
trary to a long but unfounded practice the Def who files his Bill is
not admitted as a witness in the cause unless called upon by the Plt
in the case. And the def may also call upon the Plt in the case to be
examined under the voir dire. If the case is determined in
favour of the Def all the interest legal as well as unvarious is defeat-
ed. In case the Def does not sue, the remedy for the Borrower
must be in the Eq. law. (Rever. M.S. verb.)



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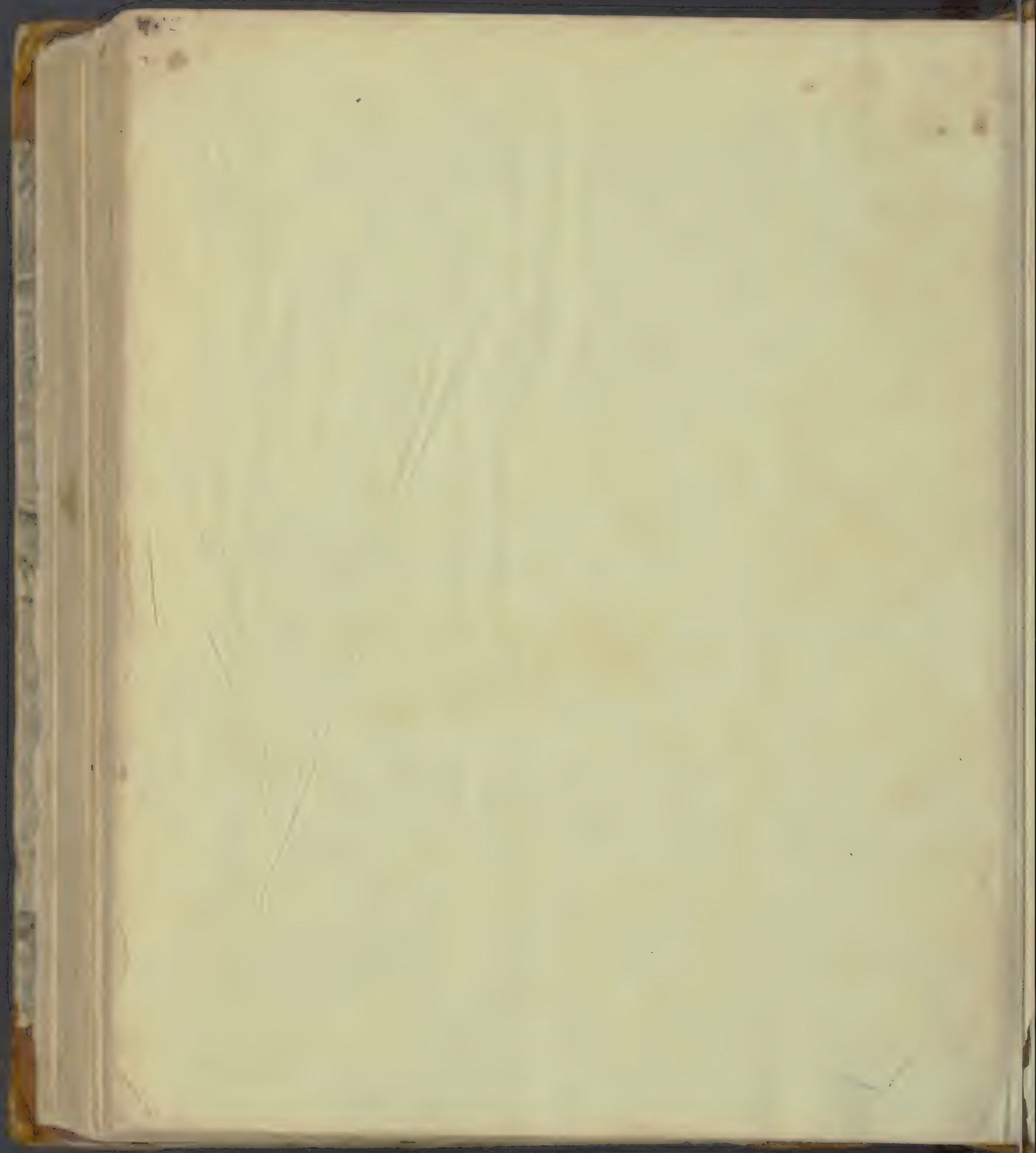
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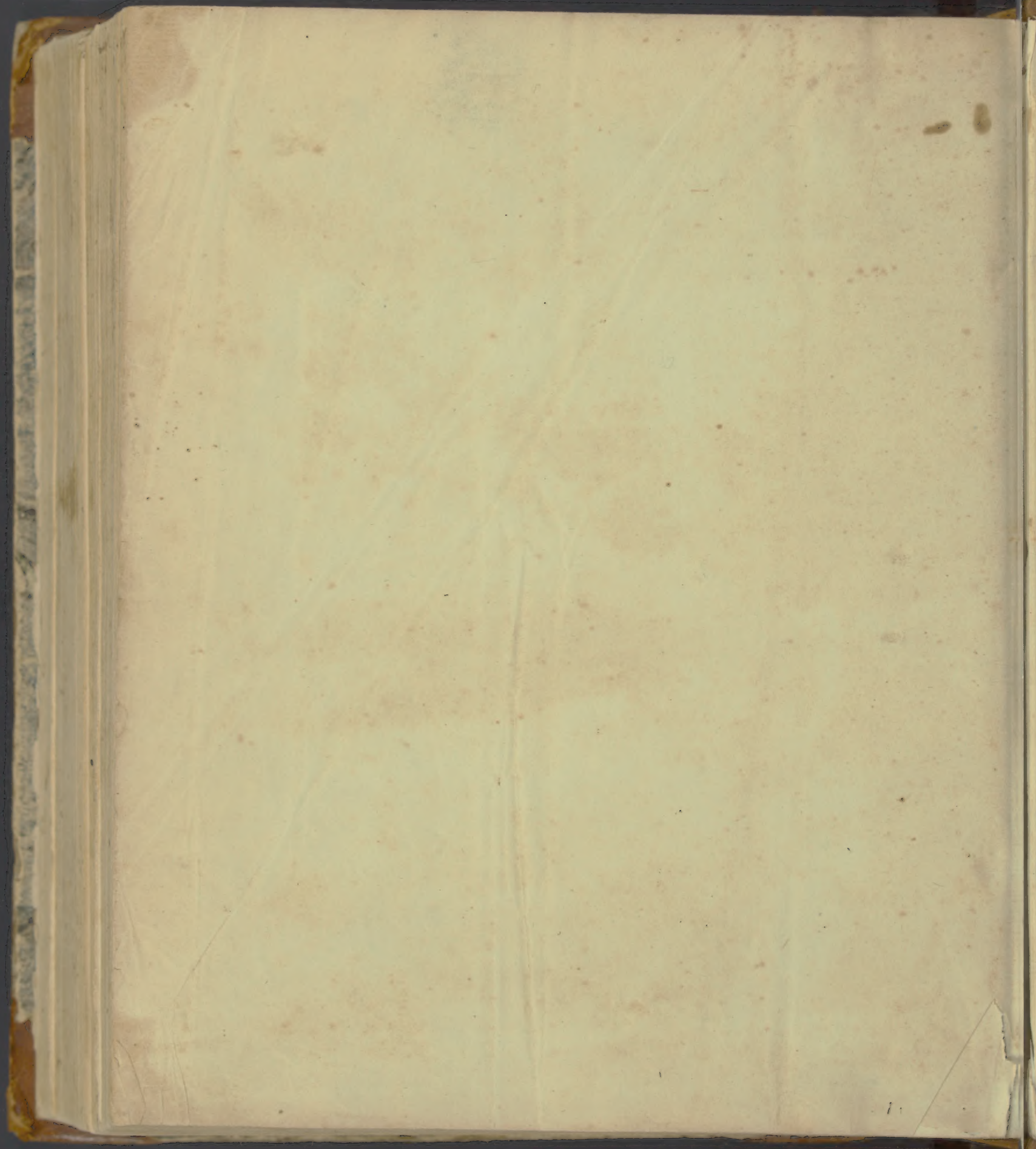
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